

WESTLAW

United States Code Annotated

Federal Rules of Civil Procedure for the United States District Courts (Refs & Annos)

Rule 56. Summary Judgment [Rule Text & Notes of Decisions subdivisions I to XV]

FRCP Rule 56 | United States Code Annotated | Federal Rules of Civil Procedure for the United States District Courts (Approx. 8 pages)

Federal Rules of Civil Procedure Rule 56

Rule 56. Summary Judgment [Rule Text & Notes of Decisions subdivisions I to XV]

Currentness

<Amendments received through April 1, 2024>

<Notes of Decisions for 28 USCA [Federal Rules of Civil Procedure Rule 56](#) are displayed in multiple documents.>

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) Time to File a Motion. Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(c) Procedures.

(1) Supporting Factual Positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) Objection That a Fact Is Not Supported by Admissible Evidence. A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) Materials Not Cited. The court need consider only the cited materials, but it may consider other materials in the record.

(4) Affidavits or Declarations. An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

NOTES OF DECISIONS (5428)

GENERALLY

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- (1) defer considering the motion or deny it;
- (2) allow time to obtain affidavits or declarations or to take discovery; or
- (3) issue any other appropriate order.

(e) Failing to Properly Support or Address a Fact. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by [Rule 56\(c\)](#), the court may:

- (1) give an opportunity to properly support or address the fact;
- (2) consider the fact undisputed for purposes of the motion;
- (3) grant summary judgment if the motion and supporting materials--including the facts considered undisputed--show that the movant is entitled to it; or
- (4) issue any other appropriate order.

(f) Judgment Independent of the Motion. After giving notice and a reasonable time to respond, the court may:

- (1) grant summary judgment for a nonmovant;
- (2) grant the motion on grounds not raised by a party; or
- (3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) Failing to Grant All the Requested Relief. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact--including an item of damages or other relief--that is not genuinely in dispute and treating the fact as established in the case.

(h) Affidavit or Declaration Submitted in Bad Faith. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court--after notice and a reasonable time to respond--may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

CREDIT(S)

(Amended December 27, 1946, effective March 19, 1948; January 21, 1963, effective July 1, 1963; March 2, 1987, effective August 1, 1987; April 30, 2007, effective December 1, 2007; March 26, 2009, effective December 1, 2009; April 28, 2010, effective December 1, 2010.)

ADVISORY COMMITTEE NOTES

1937 Adoption

This rule is applicable to all actions, including those against the United States or an officer or agency thereof.

Summary judgment procedure is a method for promptly disposing of actions in which there is no genuine issue as to any material fact. It has been extensively used in England for more than 50 years and has been adopted in a number of American states. New York, for example, has made great use of it. During the first nine years after its adoption there, the records of New York county alone show 5,600 applications for summary judgments. Report of the Commission on the Administration of Justice in New York State (1934), p. 383. See also *Third Annual Report of the Judicial Council of the State of New York* (1937), p. 30.

In England it was first employed only in cases of liquidated claims, but there has been a steady enlargement of the scope of the remedy until it is now used in actions to recover land or chattels and in all other actions at law, for liquidated or unliquidated claims, except for a few designated torts and breach of promise of marriage. *English Rules Under the Judicature Act* (The Annual Practice, 1937) O. 3, r. 6; Orders 14, 14A, and 15; see also O. 32, r. 6, authorizing an application for judgment at any time upon admissions. In Michigan (3 Comp.Laws (1929) § 14260) and Illinois (Smith-Hurd Ill.Stats. c. 110, §§ 181, 259.15, 259.16), it is not limited to liquidated demands. New York (N.Y.R.C.P. (1937) Rule 113; see

also Rule 107) has brought so many classes of actions under the operation of the rule that the Commission on Administration of Justice in New York State (1934) recommend that all restrictions be removed and that the remedy be available "in any action" (p. 287). For the history and nature of the summary judgment procedure and citations of state statutes, see Clark and Samenow, *The Summary Judgment* (1929), 38 Yale L.J. 423.

Note to Subdivision (d). See Rule 16 (Pre-Trial Procedure; Formulating Issues) and the Note thereto.

Note to Subdivisions (e) and (f). These are similar to rules in Michigan. Mich.Court Rules Ann. (Searl, 1933) Rule 30.

1946 Amendment

Note to Subdivision (a). The amendment allows a claimant to move for a summary judgment at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party. This will normally operate to permit an earlier motion by the claimant than under the original rule, where the phrase "at any time after the pleading in answer thereto has been served" operates to prevent a claimant from moving for summary judgment, even in a case clearly proper for its exercise, until a formal answer has been filed. Thus in *Peoples Bank v. Federal Reserve Bank of San Francisco*, N.D.Cal.1944, 58 F.Supp. 25, the plaintiff's countermotion for a summary judgment was stricken as premature, because the defendant had not filed an answer. Since Rule 12(a) allows at least 20 days for an answer, that time plus the 10 days required in Rule 56(c) means that under original Rule 56(a) a minimum period of 30 days necessarily has to elapse in every case before the claimant can be heard on his right to a summary judgment. An extension of time by the court or the service of preliminary motions of any kind will prolong that period even further. In many cases this merely represents unnecessary delay. See *United States v. Adler's Creamery, Inc.*, C.C.A.2, 1939, 107 F.2d 987. The changes are in the interest of more expeditious litigation. The 20-day period, as provided, gives the defendant an opportunity to secure counsel and determine a course of action. But in a case where the defendant himself makes a motion for summary judgment within that time, there is no reason to restrict the plaintiff and the amended rule so provides.

Subdivision (c). The amendment of Rule 56(c), by the addition of the final sentence, resolves a doubt expressed in *Sartor v. Arkansas Natural Gas Corp.*, 1944, 64 S.Ct. 724, 321 U.S. 620, 88 L.Ed. 967. See also Commentary, Summary Judgment as to Damages, 1944, 7 Fed.Rules Serv. 974; *Madeirense Do Brasil S/A v. Stulman-Emrick Lumber Co.*, C.C.A.2d, 1945, 147 F.2d 399, certiorari denied 1945, 65 S.Ct. 1201, 325 U.S. 861, 89 L.Ed. 1982. It makes clear that although the question of recovery depends on the amount of damages, the summary judgment rule is applicable and summary judgment may be granted in a proper case. If the case is not fully adjudicated it may be dealt with as provided in subdivision (d) of Rule 56, and the right to summary recovery determined by a preliminary order, interlocutory in character, and the precise amount of recovery left for trial.

Subdivision (d). Rule 54(a) defines "judgment" as including a decree and "any order from which an appeal lies." Subdivision (d) of Rule 56 indicates clearly, however, that a partial summary "judgment" is not a final judgment, and, therefore, that it is not appealable, unless in the particular case some statute allows an appeal from the interlocutory order involved. The partial summary judgment is merely a pretrial adjudication that certain issues shall be deemed established for the trial of the case. This adjudication is more nearly akin to the preliminary order under Rule 16, and likewise serves the purpose of speeding up litigation by eliminating before trial matters wherein there is no genuine issue of fact. See *Leonard v. Socony-Vacuum Oil Co.*, C.C.A.7, 1942, 130 F.2d 535; *Biggins v. Oltmer Iron Works*, C.C.A.7, 1946, 154 F.2d 214; 3 Moore's Federal Practice, 1938, 3190-3192. Since interlocutory appeals are not allowed, except where specifically provided by statute, see 3 Moore, op. cit. supra, 3155-3156, this interpretation is in line with that policy, *Leonard v. Socony-Vacuum Oil Co.*, supra. See also *Audi Vision Inc. v. RCA Mfg. Co.*, C.C.A.2, 1943, 136 F.2d 621; *Toomey v. Toomey*, 1945, 149 F.2d 19, 80 U.S.App.D.C. 77; *Biggins v. Oltmer Iron Works*, supra; *Catlin v. United States*, 1945, 65 S.Ct. 631, 324 U.S. 229, 89 L.Ed. 911.

1963 Amendment

Subdivision (c). By the amendment “answers to interrogatories” are included among the materials which may be considered on motion for summary judgment. The phrase was inadvertently omitted from the rule, see 3 Barron & Holtzoff, *Federal Practice & Procedure* 159-60 (Wright ed. 1958), and the courts have generally reached by interpretation the result which will hereafter be required by the text of the amended rule. See [Annot., 74 A.L.R.2d 984 \(1960\)](#).

Subdivision (e). The words “answers to interrogatories” are added in the third sentence of this subdivision to conform to the amendment of subdivision (c).

The last two sentences are added to overcome a line of cases, chiefly in the Third Circuit, which has impaired the utility of the summary judgment device. A typical case is as follows: A party supports his motion for summary judgment by affidavits or other evidentiary matter sufficient to show that there is no genuine issue as to a material fact. The adverse party, in opposing the motion, does not produce any evidentiary matter, or produces some but not enough to establish that there is a genuine issue for trial. Instead, the adverse party rests on averments of his pleadings which on their face present an issue. In this situation Third Circuit cases have taken the view that summary judgment must be denied, at least if the averments are “well-pleaded,” and not suppositious, conclusory, or ultimate. See [Frederick Hart & Co., Inc. v. Recordgraph Corp.](#), 169 F.2d 580 (3d Cir. 1948); [United States ex rel. Kolton v. Halpern](#), 260 F.2d 590 (3d Cir. 1958); [United States ex rel. Nobles v. Ivey Bros. Constr. Co., Inc.](#), 191 F.Supp. 383 (D.Del.1961); [Jamison v. Pennsylvania Salt Mfg. Co.](#), 22 F.R.D. 238 (W.D.Pa.1958); [Bunny Bear, Inc. v. Dennis Mitchell Industries](#), 139 F.Supp. 542 (E.D.Pa.1956); [Levy v. Equitable Life Assur. Society](#), 18 F.R.D. 164 (E.D.Pa.1955).

The very mission of the summary judgment procedure is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial. The Third Circuit doctrine, which permits the pleadings themselves to stand in the way of granting an otherwise justified summary judgment, is incompatible with the basic purpose of the rule. See 6 *Moore's Federal Practice* 2069 (2d ed. 1953); 3 Barron & Holtzoff, *supra*, § 1235.1.

It is hoped that the amendment will contribute to the more effective utilization of the salutary device of summary judgment.

The amendment is not intended to derogate from the solemnity of the pleadings. Rather it recognizes that, despite the best efforts of counsel to make his pleadings accurate, they may be overwhelmingly contradicted by the proof available to his adversary.

Nor is the amendment designed to affect the ordinary standards applicable to the summary judgment motion. So, for example: Where an issue as to a material fact cannot be resolved without observation of the demeanor of witnesses in order to evaluate their credibility, summary judgment is not appropriate. Where the evidentiary matter in support of the motion does not establish the absence of a genuine issue, summary judgment must be denied even if no opposing evidentiary matter is presented. And summary judgment may be inappropriate where the party opposing it shows under subdivision (f) that he cannot at the time present facts essential to justify his opposition.

1987 Amendment

The amendments are technical. No substantive change is intended.

2007 Amendment

The language of [Rule 56](#) has been amended as part of the general restyling of the Civil Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only.

Former Rule 56(a) and (b) referred to summary-judgment motions on or against a claim, counterclaim, or crossclaim, or to obtain a declaratory judgment. The list was incomplete. [Rule 56](#) applies to third-party claimants, intervenors, claimants in interpleader, and others. Amended [Rule 56\(a\)](#) and [\(b\)](#) carry forward the present meaning by referring to a party claiming relief and a party against whom relief is sought.

Former Rule 56(c), (d), and (e) stated circumstances in which summary judgment “shall be rendered,” the court “shall if practicable” ascertain facts existing without substantial controversy, and “if appropriate, shall” enter summary judgment. In each place “shall” is

changed to “should.” It is established that although there is no discretion to enter summary judgment when there is a genuine issue as to any material fact, there is discretion to deny summary judgment when it appears that there is no genuine issue as to any material fact. *Kennedy v. Silas Mason Co.*, 334 U.S. 249, 256-257 (1948). Many lower court decisions are gathered in 10A Wright, Miller & Kane, *Federal Practice & Procedure: Civil 3d*, § 2728. “Should” in amended [Rule 56\(c\)](#) recognizes that courts will seldom exercise the discretion to deny summary judgment when there is no genuine issue as to any material fact. Similarly sparing exercise of this discretion is appropriate under [Rule 56\(e\)\(2\)](#). [Rule 56\(d\)\(1\)](#), on the other hand, reflects the more open-ended discretion to decide whether it is practicable to determine what material facts are not genuinely at issue.

Former Rule 56(d) used a variety of different phrases to express the [Rule 56\(c\)](#) standard for summary judgment—that there is no genuine issue as to any material fact. Amended [Rule 56\(d\)](#) adopts terms directly parallel to [Rule 56\(c\)](#).

2009 Amendment

The timing provisions for summary judgment are outmoded. They are consolidated and substantially revised in new subdivision (c)(1). The new rule allows a party to move for summary judgment at any time, even as early as the commencement of the action. If the motion seems premature both subdivision (c)(1) and Rule 6(b) allow the court to extend the time to respond. The rule does set a presumptive deadline at 30 days after the close of all discovery.

The presumptive timing rules are default provisions that may be altered by an order in the case or by local rule. Scheduling orders are likely to supersede the rule provisions in most cases, deferring summary-judgment motions until a stated time or establishing different deadlines. Scheduling orders tailored to the needs of the specific case, perhaps adjusted as it progresses, are likely to work better than default rules. A scheduling order may be adjusted to adopt the parties' agreement on timing, or may require that discovery and motions occur in stages—including separation of expert-witness discovery from other discovery.

Local rules may prove useful when local docket conditions or practices are incompatible with the general [Rule 56](#) timing provisions.

If a motion for summary judgment is filed before a responsive pleading is due from a party affected by the motion, the time for responding to the motion is 21 days after the responsive pleading is due.

2010 Amendment

[Rule 56](#) is revised to improve the procedures for presenting and deciding summary-judgment motions and to make the procedures more consistent with those already used in many courts. The standard for granting summary judgment remains unchanged. The language of subdivision (a) continues to require that there be no genuine dispute as to any material fact and that the movant be entitled to judgment as a matter of law. The amendments will not affect continuing development of the decisional law construing and applying these phrases.

Subdivision (a). Subdivision (a) carries forward the summary-judgment standard expressed in former subdivision (c), changing only one word—genuine “issue” becomes genuine “dispute.” “Dispute” better reflects the focus of a summary-judgment determination. As explained below, “shall” also is restored to the place it held from 1938 to 2007.

The first sentence is added to make clear at the beginning that summary judgment may be requested not only as to an entire case but also as to a claim, defense, or part of a claim or defense. The subdivision caption adopts the common phrase “partial summary judgment” to describe disposition of less than the whole action, whether or not the order grants all the relief requested by the motion.

“Shall” is restored to express the direction to grant summary judgment. The word “shall” in [Rule 56](#) acquired significance over many decades of use. [Rule 56](#) was amended in 2007 to replace “shall” with “should” as part of the Style Project, acting under a convention that prohibited any use of “shall.” Comments on proposals to amend [Rule 56](#), as published in 2008, have shown that neither of the choices available under the Style Project conventions-

–“must” or “should”--is suitable in light of the case law on whether a district court has discretion to deny summary judgment when there appears to be no genuine dispute as to any material fact. Compare *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986) (“Neither do we suggest that the trial courts should act other than with caution in granting summary judgment or that the trial court may not deny summary judgment in a case in which there is reason to believe that the better course would be to proceed to a full trial. *Kennedy v. Silas Mason Co.*, 334 U.S. 249 * * * (1948)”), with *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986) (“In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.”). Eliminating “shall” created an unacceptable risk of changing the summary-judgment standard. Restoring “shall” avoids the unintended consequences of any other word.

Subdivision (a) also adds a new direction that the court should state on the record the reasons for granting or denying the motion. Most courts recognize this practice. Among other advantages, a statement of reasons can facilitate an appeal or subsequent trial-court proceedings. It is particularly important to state the reasons for granting summary judgment. The form and detail of the statement of reasons are left to the court’s discretion.

The statement on denying summary judgment need not address every available reason. But identification of central issues may help the parties to focus further proceedings.

Subdivision (b). The timing provisions in former subdivisions (a) and (c) are superseded. Although the rule allows a motion for summary judgment to be filed at the commencement of an action, in many cases the motion will be premature until the nonmovant has had time to file a responsive pleading or other pretrial proceedings have been had. Scheduling orders or other pretrial orders can regulate timing to fit the needs of the case.

Subdivision (c). Subdivision (c) is new. It establishes a common procedure for several aspects of summary-judgment motions synthesized from similar elements developed in the cases or found in many local rules.

Subdivision (c)(1) addresses the ways to support an assertion that a fact can or cannot be genuinely disputed. It does not address the form for providing the required support. Different courts and judges have adopted different forms including, for example, directions that the support be included in the motion, made part of a separate statement of facts, interpolated in the body of a brief or memorandum, or provided in a separate statement of facts included in a brief or memorandum.

Subdivision (c)(1)(A) describes the familiar record materials commonly relied upon and requires that the movant cite the particular parts of the materials that support its fact positions. Materials that are not yet in the record—including materials referred to in an affidavit or declaration—must be placed in the record. Once materials are in the record, the court may, by order in the case, direct that the materials be gathered in an appendix, a party may voluntarily submit an appendix, or the parties may submit a joint appendix. The appendix procedure also may be established by local rule. Pointing to a specific location in an appendix satisfies the citation requirement. So too it may be convenient to direct that a party assist the court in locating materials buried in a voluminous record.

Subdivision (c)(1)(B) recognizes that a party need not always point to specific record materials. One party, without citing any other materials, may respond or reply that materials cited to dispute or support a fact do not establish the absence or presence of a genuine dispute. And a party who does not have the trial burden of production may rely on a showing that a party who does have the trial burden cannot produce admissible evidence to carry its burden as to the fact.

Subdivision (c)(2) provides that a party may object that material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence. The objection functions much as an objection at trial, adjusted for the pretrial setting. The burden is on the proponent to show that the material is admissible as presented or to explain the admissible form that is anticipated. There is no need to make a separate motion to strike. If the case goes to trial, failure to challenge admissibility at the summary-judgment stage does not forfeit the right to challenge admissibility at trial.

Subdivision (c)(3) reflects judicial opinions and local rules provisions stating that the court may decide a motion for summary judgment without undertaking an independent search of the record. Nonetheless, the rule also recognizes that a court may consider record materials not called to its attention by the parties.

Subdivision (c)(4) carries forward some of the provisions of former subdivision (e)(1). Other provisions are relocated or omitted. The requirement that a sworn or certified copy of a paper referred to in an affidavit or declaration be attached to the affidavit or declaration is omitted as unnecessary given the requirement in subdivision (c)(1)(A) that a statement or dispute of fact be supported by materials in the record.

A formal affidavit is no longer required. [28 U.S.C. § 1746](#) allows a written unsworn declaration, certificate, verification, or statement subscribed in proper form as true under penalty of perjury to substitute for an affidavit.

Subdivision (d). Subdivision (d) carries forward without substantial change the provisions of former subdivision (f).

A party who seeks relief under subdivision (d) may seek an order deferring the time to respond to the summary-judgment motion.

Subdivision (e). Subdivision (e) addresses questions that arise when a party fails to support an assertion of fact or fails to properly address another party's assertion of fact as required by [Rule 56\(c\)](#). As explained below, summary judgment cannot be granted by default even if there is a complete failure to respond to the motion, much less when an attempted response fails to comply with [Rule 56\(c\)](#) requirements. Nor should it be denied by default even if the movant completely fails to reply to a nonmovant's response. Before deciding on other possible action, subdivision (e)(1) recognizes that the court may afford an opportunity to properly support or address the fact. In many circumstances this opportunity will be the court's preferred first step.

Subdivision (e)(2) authorizes the court to consider a fact as undisputed for purposes of the motion when response or reply requirements are not satisfied. This approach reflects the "deemed admitted" provisions in many local rules. The fact is considered undisputed only for purposes of the motion; if summary judgment is denied, a party who failed to make a proper [Rule 56](#) response or reply remains free to contest the fact in further proceedings. And the court may choose not to consider the fact as undisputed, particularly if the court knows of record materials that show grounds for genuine dispute.

Subdivision (e)(3) recognizes that the court may grant summary judgment only if the motion and supporting materials--including the facts considered undisputed under subdivision (e) (2)--show that the movant is entitled to it. Considering some facts undisputed does not of itself allow summary judgment. If there is a proper response or reply as to some facts, the court cannot grant summary judgment without determining whether those facts can be genuinely disputed. Once the court has determined the set of facts--both those it has chosen to consider undisputed for want of a proper response or reply and any that cannot be genuinely disputed despite a procedurally proper response or reply--it must determine the legal consequences of these facts and permissible inferences from them.

Subdivision (e)(4) recognizes that still other orders may be appropriate. The choice among possible orders should be designed to encourage proper presentation of the record. Many courts take extra care with pro se litigants, advising them of the need to respond and the risk of losing by summary judgment if an adequate response is not filed. And the court may seek to reassure itself by some examination of the record before granting summary judgment against a pro se litigant.

Subdivision (f). Subdivision (f) brings into [Rule 56](#) text a number of related procedures that have grown up in practice. After giving notice and a reasonable time to respond the court may grant summary judgment for the nonmoving party; grant a motion on legal or factual grounds not raised by the parties; or consider summary judgment on its own. In many cases it may prove useful first to invite a motion; the invited motion will automatically trigger the regular procedure of subdivision (c).

Subdivision (g). Subdivision (g) applies when the court does not grant all the relief requested by a motion for summary judgment. It becomes relevant only after the court has applied the summary-judgment standard carried forward in subdivision (a) to each claim,

defense, or part of a claim or defense, identified by the motion. Once that duty is discharged, the court may decide whether to apply the summary-judgment standard to dispose of a material fact that is not genuinely in dispute. The court must take care that this determination does not interfere with a party's ability to accept a fact for purposes of the motion only. A nonmovant, for example, may feel confident that a genuine dispute as to one or a few facts will defeat the motion, and prefer to avoid the cost of detailed response to all facts stated by the movant. This position should be available without running the risk that the fact will be taken as established under subdivision (g) or otherwise found to have been accepted for other purposes.

If it is readily apparent that the court cannot grant all the relief requested by the motion, it may properly decide that the cost of determining whether some potential fact disputes may be eliminated by summary disposition is greater than the cost of resolving those disputes by other means, including trial. Even if the court believes that a fact is not genuinely in dispute it may refrain from ordering that the fact be treated as established. The court may conclude that it is better to leave open for trial facts and issues that may be better illuminated by the trial of related facts that must be tried in any event.

Subdivision (h). Subdivision (h) carries forward former subdivision (g) with three changes. Sanctions are made discretionary, not mandatory, reflecting the experience that courts seldom invoke the independent [Rule 56](#) authority to impose sanctions. See Cecil & Cort, Federal Judicial Center Memorandum on [Federal Rule of Civil Procedure 56\(g\)](#) Motions for Sanctions (April 2, 2007). In addition, the rule text is expanded to recognize the need to provide notice and a reasonable time to respond. Finally, authority to impose other appropriate sanctions also is recognized.

Relevant Additional Resources

Additional Resources listed below contain your search terms.

CROSS REFERENCES

Dismissal of action prior to service of motion for summary judgment, see [Fed.Rules Civ.Proc. Rule 41, 28 USCA](#).

Injunctions, single judge not to enter summary judgment, see [28 USCA § 2284](#).

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[Summary judgment and circumstantial evidence](#). Note, 40 Stan.L.Rev. 491 (1988).

[Summary judgment and Title VII after Hicks: How much evidence does it take to make an inference?](#) 28 U.C.Davis L.Rev. 261 (1994).

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[27A Federal Procedure, Lawyers Edition § 62:611](#), Basing Summary-Judgment Motion on Affirmative Defense--Disallowed Types of Defenses.

[27A Federal Procedure, Lawyers Edition § 62:612](#), Challenges to Jurisdiction on Summary-Judgment Motion.

[27A Federal Procedure, Lawyers Edition § 62:613](#), Necessity of the Completion of Discovery Before Summary-Judgment Motion.

[27A Federal Procedure, Lawyers Edition § 62:618](#), Credibility Not Determined on Summary Judgment.

[27A Federal Procedure, Lawyers Edition § 62:621](#), Court as Trier of Fact on Summary-Judgment Motion.

[27A Federal Procedure, Lawyers Edition § 62:623](#), Amendments to Pleadings After Summary-Judgment Motion Made.

[27A Federal Procedure, Lawyers Edition § 62:625](#), Effect of Counterclaim on Motion for Summary Judgment.

[27A Federal Procedure, Lawyers Edition § 62:627](#), Court's Discretion in Granting Summary-Judgment Motion.

[27A Federal Procedure, Lawyers Edition § 62:628](#), Time to File a Summary-Judgment Motion.

[27A Federal Procedure, Lawyers Edition § 62:632](#), Content of Summary-Judgment Motion.

[27A Federal Procedure, Lawyers Edition § 62:633](#), Formal Response to Summary-Judgment Motion.

[27A Federal Procedure, Lawyers Edition § 62:635](#), Adjournment of Summary-Judgment Motion When Facts Are Unavailable to the Nonmovant.

[27A Federal Procedure, Lawyers Edition § 62:636](#), Required Showing for Adjournment of Summary-Judgment Motion.

[27A Federal Procedure, Lawyers Edition § 62:638](#), Content of Affidavit or Declaration for Adjournment of Summary-Judgment Motion.

[27A Federal Procedure, Lawyers Edition § 62:639](#), Time for Filing Affidavit or Declaration for Adjournment of Summary-Judgment Motion.

[27A Federal Procedure, Lawyers Edition § 62:640](#), Extent of Discovery Authorized by Adjournment of Summary-Judgment Motion.

[27A Federal Procedure, Lawyers Edition § 62:646](#), Materials Considered on Summary-Judgment Motion, Generally.

[27A Federal Procedure, Lawyers Edition § 62:647](#), Consideration of Entire Record on Summary-Judgment Motion.

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[27A Federal Procedure, Lawyers Edition § 62:649](#), Affidavits Used to Support or Oppose Motion for Summary Judgment; Form and Procedure.

[27A Federal Procedure, Lawyers Edition § 62:650](#), Affidavits Used to Support or Oppose Motion for Summary Judgment; Form and Procedure--Content.

[27A Federal Procedure, Lawyers Edition § 62:651](#), Affidavits Used to Support or Oppose Motion for Summary Judgment; Form and Procedure--Affidavit Raising Good Faith or Credibility Issue.

[27A Federal Procedure, Lawyers Edition § 62:652](#), Affidavits Used to Support or Oppose Motion for Summary Judgment; Form and Procedure--Personal Knowledge Requirement.

[27A Federal Procedure, Lawyers Edition § 62:653](#), Affidavits Used to Support or Oppose Motion for Summary Judgment; Form and Procedure--Personal Knowledge Requirement--Affidavit Containing Hearsay.

[27A Federal Procedure, Lawyers Edition § 62:654](#), Affidavits Used to Support or Oppose Motion for Summary Judgment; Form and Procedure--Personal Knowledge Requirement--Establishing Personal Knowledge.

[27A Federal Procedure, Lawyers Edition § 62:655](#), Affidavits Used to Support or Oppose Motion for Summary Judgment; Form and Procedure--Attorney's Affidavit or Statement.

[27A Federal Procedure, Lawyers Edition § 62:656](#), Affidavits Used to Support or Oppose Motion for Summary Judgment; Form and Procedure--Opinion and Expert Opinion.

[27A Federal Procedure, Lawyers Edition § 62:657](#), Affidavits Used to Support or Oppose Motion for Summary Judgment; Form and Procedure--Opinion and Expert Opinion--Basis for Expert Opinion.

[27A Federal Procedure, Lawyers Edition § 62:658](#), Affidavits Used to Support or Oppose Motion for Summary Judgment; Form and Procedure--Effect of Inadequate Affidavit.

[27A Federal Procedure, Lawyers Edition § 62:660](#), Exhibits and Documents Considered on Summary-Judgment Motion.

[27A Federal Procedure, Lawyers Edition § 62:661](#), Exhibits and Documents Considered on Summary-Judgment Motion--Document Must be Exhibited in Full.

[27A Federal Procedure, Lawyers Edition § 62:662](#), Exhibits and Documents Considered on Summary-Judgment Motion--Effect of Document or Exhibit Not in Compliance With [Fed. R. Civ. P. 56](#).

[27A Federal Procedure, Lawyers Edition § 62:663](#), Depositions and Answers to Interrogatories Considered on Summary-Judgment Motion.

[27A Federal Procedure, Lawyers Edition § 62:664](#), Pleading or Petition Considered on Summary-Judgment Motion.

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[27A Federal Procedure, Lawyers Edition § 62:668](#), Administrative or Legislative Records Considered on Summary-Judgment Motion.

[27A Federal Procedure, Lawyers Edition § 62:669](#), Utilization by Court of Judicial Notice in Hearing on Motion for Summary Judgment.

[27A Federal Procedure, Lawyers Edition § 62:670](#), Other Information Available to Court Considered on Summary-Judgment Motion.

[27A Federal Procedure, Lawyers Edition § 62:674](#), Findings by Court on Summary Judgment Motion.

[27A Federal Procedure, Lawyers Edition § 62:675](#), Judgment Sua Sponte on Summary Judgment Motion.

[27A Federal Procedure, Lawyers Edition § 62:677](#), Effect of Cross-Motions for Summary Judgment.

[27A Federal Procedure, Lawyers Edition § 62:679](#), Availability of Summary Judgment in Particular Cases, Generally.

[27A Federal Procedure, Lawyers Edition § 62:681](#), Summary Judgment on Pro Se Complaints.

[27A Federal Procedure, Lawyers Edition § 62:682](#), Summary Judgment on Pro Se Complaints--Notice in Pro Se Cases.

[27A Federal Procedure, Lawyers Edition § 62:689](#), Motion for Reconsideration of Summary Judgment.

[27A Federal Procedure, Lawyers Edition § 62:690](#), Procedure on Appeal of Decision on Summary Judgment Motion.

[27A Federal Procedure, Lawyers Edition § 62:691](#), Presenting New Facts, Evidence, or Issues on Appeal from Decision on Summary Judgment Motion.

[27A Federal Procedure, Lawyers Edition § 62:692](#), Effect of District Court's Characterization of Case on Appeal of Summary Judgment.

[27A Federal Procedure, Lawyers Edition § 62:693](#), Extent of Reviewing Court's Authority in Summary Judgment Cases; Direction of Entry of Summary Judgment.

[27A Federal Procedure, Lawyers Edition § 62:694](#), Effect of Remand of Summary Judgment.

[27A Federal Procedure, Lawyers Edition § 62:698](#), Relationship of Motions for Judgment (Fed. R. Civ. P. 50) to Motion for Summary Judgment (Fed. R. Civ. P. 56).

[27A Federal Procedure, Lawyers Edition § 62:812](#), Motions for Summary Judgment--Order Denying Summary Judgment.

[28 Federal Procedure, Lawyers Edition § 64:13](#), Consideration of Entry of Summary Judgment at Pretrial Conference.

[28 Federal Procedure, Lawyers Edition § 64:59](#), Identifying, Narrowing, and Resolving Issues in Complex Litigation Case--Use of Summary Judgment.

[32A Federal Procedure, Lawyers Edition § 75:520](#), Summary Judgment Under the Petroleum Marketing Practices Act.

[32 Federal Procedure, Lawyers Edition § 74:362](#), Summary Judgment Before Trademark Trial and Appeal Board.

[32 Federal Procedure, Lawyers Edition § 74:384](#), Standard of Review--On Review of Ruling on Summary Judgment Motion.

[32 Federal Procedure, Lawyers Edition § 74:517](#), Grant of Summary Judgment in Trademark Infringement Actions.

[33A Federal Procedure, Lawyers Edition § 80:241](#), Preliminary Assessment by Court of Adequacy of Basis--Where Summary Judgment is Sought.

[33 Federal Procedure, Lawyers Edition § 77:356](#), Partial Findings Contrasted With Summary Judgment.

[3 McCarthy on Trademarks and Unfair Competition § 20:132 \(5th ed.\)](#), Motion for Summary Judgment.

[14 Mertens Law of Federal Income Taxation § 50:82](#), Motion for Summary Judgment.

[11 Norton Bankruptcy Law and Practice 3d Fed. R. Bankr. P. 7056](#), Summary Judgment.

[6 Patent Law Fundamentals § 20:108 \(2d ed.\)](#), Summary Judgment.

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[Wright & Miller Federal Practice and Procedure § 2532](#), Standard Distinguished from Other Procedures--Summary Judgment.

[Wright & Miller Federal Practice and Procedure § 2713](#), Comparison of the Summary-Judgment Motion With Other Pretrial Motions.

[Wright & Miller Federal Practice and Procedure § 2713.1](#), Comparison of the Summary-Judgment Motion With the Motion for Judgment as a Matter of Law.

[Wright & Miller Federal Practice and Procedure § 2714](#), Summary Judgment and the Right to Jury Trial.

[Wright & Miller Federal Practice and Procedure § 2715](#), Appealability of a Grant or Denial of Summary Judgment.

[Wright & Miller Federal Practice and Procedure § 2716](#), Nature of the Review on Appeal from a Grant or Denial of Summary Judgment.

[Wright & Miller Federal Practice and Procedure § 2717](#), Motion for Summary Judgment by Claimant.

[Wright & Miller Federal Practice and Procedure § 2718](#), Motion for Summary Judgment by Defending Party.

[Wright & Miller Federal Practice and Procedure § 2719](#), Procedure on a Motion for Summary Judgment--In General.

[Wright & Miller Federal Practice and Procedure § 2720](#), Procedure on a Motion for Summary Judgment--Cross-Motions.

[Wright & Miller Federal Practice and Procedure § 2720.1](#), Procedure on a Motion for Summary Judgment--Summary Judgment Without a Motion.

[Wright & Miller Federal Practice and Procedure § 2720.2](#), Procedure on a Motion for Summary Judgment--Summary-Judgment Hearings.

[Wright & Miller Federal Practice and Procedure § 2725](#), Grounds for Summary Judgment--In General.

[Wright & Miller Federal Practice and Procedure § 2725.1](#), Grounds for Summary Judgment--What is a Material Fact.

[Wright & Miller Federal Practice and Procedure § 2725.2](#), Grounds for Summary Judgment--When Does a Genuine Dispute Exist.

[Wright & Miller Federal Practice and Procedure § 2725.3](#), Grounds for Summary Judgment--When is the Movant Entitled to Judgment as a Matter of Law.

[Wright & Miller Federal Practice and Procedure § 2726](#), Grounds for Summary Judgment--Credibility.

[Wright & Miller Federal Practice and Procedure § 2727](#), Grounds for Summary Judgment--Burden of Proof and Presumptions: Generally.

[Wright & Miller Federal Practice and Procedure § 2727.1](#), Grounds for Summary Judgment--Burden on the Moving Party.

[Wright & Miller Federal Practice and Procedure § 2727.2](#), Grounds for Summary Judgment--Burden on the Opposing Party.

[Wright & Miller Federal Practice and Procedure § 2728](#), Grounds for Summary Judgment--Judicial Discretion in Deciding a Rule 56 Motion.

[Wright & Miller Federal Practice and Procedure § 2736](#), Summary Judgment on the Issue of Liability.

[Wright & Miller Federal Practice and Procedure § 2738](#), Affidavits in Support of or in Opposition to Summary Judgment.

[Wright & Miller Federal Practice and Procedure § 2739](#), Obligation of Party Opposing Summary Judgment to Present Evidence.

[Wright & Miller Federal Practice and Procedure § 3914.10.4](#), Orders Prior to Trial--Immunity Appeals--Summary Judgment.

[Wright & Miller Federal Practice and Procedure § 4508](#), The Erie Doctrine, Rules Enabling Act, and Federal Rules of Civil Procedure--Matters Covered by the Civil Rules.

[Wright & Miller Federal Practice and Procedure § 4509](#), The Erie Doctrine, Rules Enabling Act, and Federal Rules of Civil Procedure--The "Substantive Rights" Limitation.

[Wright & Miller Federal Practice and Procedure § 5036.13](#), Objections and Summary Judgment.

Relevant Notes of Decisions (1929)

[View all 5428](#)

Notes of Decisions listed below contain your search terms.

GENERALLY

Construction generally

[Rule 56](#) must be construed with due regard not only for the rights of persons asserting claims and defenses that are adequately based in fact to have those claims and defenses tried to a jury but also for the rights of persons opposing such claims and defenses to demonstrate, in the manner provided by the Rule prior to trial, that the claims and defenses have no factual basis. [Celotex Corp. v. Catrett](#), U.S. Dist. Col. 1986, 106 S.Ct. 2548, 477 U.S. 317, 91 L.Ed.2d 265, on remand 826 F.2d 33, 263 U.S.App.D.C. 399. See, also, [Bland v. Atlas Van Lines, Inc.](#), S.D. Ind. 1989, 761 F.Supp. 82. [Summary Judgment](#) 📌 1

Much liberality is allowed in cases where there is a possible question of fact involved in summary judgment dispositions. [Kern v. Tri-State Ins. Co.](#), C.A.8 (Mo.) 1967, 386 F.2d 754. [Summary Judgment](#) 📌 1

Requirement that summary judgment can be granted only if there is no genuine dispute as to any material fact is to be strictly construed so as to insure that factual issues will not be determined without benefit of truth-seeking procedures of trial. [Jackson Tool & Die, Inc. v. Smith](#), C.A.5 (Miss.) 1964, 339 F.2d 88. See, also, [U.S. v. United Scenic Artists Local 829 of Broth. of Painters, Decorators and Paperhangers of America](#), D.C.N.Y. 1961, 27 F.R.D. 499. [Summary Judgment](#) 📌 41

Plain language of summary judgment rule mandates entry of summary judgment, after adequate time for discovery and upon motion, against party who fails to make showing sufficient to establish existence of element essential to that party's case, and on which that party will bear burden of proof at trial; in such a situation there can be no genuine issue as to any material fact, since complete failure of proof concerning essential element of nonmoving party's case necessarily renders all other facts immaterial. [Zimbauer v. Milwaukee Orthopaedic Group, Ltd., E.D.Wis.1996, 920 F.Supp. 959. Summary Judgment](#) 🏠 51

Due deference must be given to the rights of litigants to have their claims adjudicated by the appropriate finder of fact, but equal deference must be given to the rights of those defending against those claims to have a just, speedy, and inexpensive determination of the actions where the claims have no factual basis. [Anderson v. Industrial Elec. Reels, Inc., D.Neb.1993, 812 F.Supp. 999. Summary Judgment](#) 🏠 1

One of principal purposes of summary judgment is to isolate and dispose of factually unsupported claims or defenses, and rule should be interpreted in way that allows it to accomplish this purpose. [Snowden By and Through Victor v. Connaught Laboratories, Inc., D.Kan.1992, 793 F.Supp. 1040. Summary Judgment](#) 🏠 2

Subd. (f) of this rule pertaining to when affidavits are unavailable on summary judgment motion is to be liberally construed to prevent injustice to a party faced with summary judgment motion; it is also designed to enable a court to avoid abuse of the discovery process and necessarily assumes that there will be cases where the court, in the exercise of its discretion, may deny the application for further discovery. [Catanzaro v. Masco Corp., D.C.Del.1976, 408 F.Supp. 862, 192 U.S.P.Q. 637. Summary Judgment](#) 🏠 311

Construction with statutory provisions--Generally

District court properly applied summary judgment standard set forth in *Loren F. ex rel. Fisher v. Atlanta Independent School System*, rather than usual summary judgment standard under federal civil procedural rules, to parents' claims challenging school district's unilateral amendment of disabled student's individualized education program (IEP) under Individuals with Disabilities Education Act (IDEA); there were no significant factual disputes for district court to decide, and it had no occasion to defer or reject hearing officer's factual findings, and parents did not identify any evidence they might have submitted that would have established genuine issue of fact regarding their claims. [K.A. ex rel. F.A. v. Fulton County School Dist., C.A.11 \(Ga.\) 2013, 741 F.3d 1195. Education](#) 🏠 896(2)

FELA action must be submitted to a jury, rather than resolved on summary judgment, even where the evidence of employer negligence is only slight. [Doty v. Illinois Cent. R. Co., C.A.7 \(Ill.\) 1998, 162 F.3d 460. Summary Judgment](#) 🏠 187

In forfeiture case, summary judgment procedures must necessarily be construed in light of statutory law of forfeitures, and particularly procedural requirements set forth therein. [U.S. v. One 56-Foot Yacht Named Tahuna, C.A.9 \(Cal.\) 1983, 702 F.2d 1276. Forfeitures](#) 🏠 114

Kansas courts use the ADEA's summary judgment burden-shifting framework and related persuasive authority to analyze Kansas Age Discrimination in Employment Act (KADEA) claims. [Forbes v. Kinder Morgan, Inc., D.Kan.2016, 172 F.Supp.3d 1182, affirmed 686 Fed.Appx. 552, 2017 WL 1416298. Civil Rights](#) 🏠 1200; [Civil Rights](#) 🏠 1744

Entry of summary judgment on statute of limitations grounds in putative class action by employees of the Federal Aviation Administration (FAA), alleging discriminatory pay in violation of the Age Discrimination in Employment Act (ADEA), could not be vacated following passage of Lilly Ledbetter Act, which retroactively amended the ADEA to extend limitations period based on receipt of each paycheck; judgment was final and not subject to appeal when Lilly Ledbetter Act took effect. [O'Hara v. LaHood, D.D.C.2010, 756 F.Supp.2d 75. Civil Rights](#) 🏠 1106

The fact that on summary judgment the evidence must be construed in a light favorable to the non-moving party does not modify the standard requiring the party claiming trademark infringement to demonstrate by preponderance of the evidence the likelihood of consumer confusion by alleged infringer's use of mark. [Advance Magazine Publishers, Inc. v. Norris, S.D.N.Y.2008, 627 F.Supp.2d 103. Summary Judgment](#) 🏠 177; [Trademarks](#) 🏠 1691

Dictates of Antiterrorism and Effective Death Penalty Act (AEDPA) according presumption of correctness in habeas proceedings to state court factual findings and requiring petitioner to rebut presumption by clear and convincing evidence trumped summary judgment doctrine that facts must be construed in light most favorable to party opposing motion, under habeas rule providing that federal rules of civil procedure are applicable only to extent not inconsistent with habeas procedures. [Gentry v. Sinclair, W.D.Wash.2008, 576 F.Supp.2d 1130](#), reconsideration denied [609 F.Supp.2d 1179](#), affirmed but criticized [693 F.3d 867](#), amended and superseded on denial of rehearing en banc [705 F.3d 884](#), petition for certiorari filed [134 S.Ct. 102](#), [571 U.S. 845](#), [187 L.Ed.2d 75](#), rehearing denied [134 S.Ct. 726](#), [571 U.S. 1088](#), [187 L.Ed.2d 581](#). [Habeas Corpus](#) 📌 768; [Habeas Corpus](#) 📌 801

When a plaintiff fails to raise a triable issue on summary judgment as to causation and injury, its Lanham Act claim is still viable to the extent it seeks an injunction. [Soilworks, LLC v. Midwest Indus. Supply, Inc., D.Ariz.2008, 575 F.Supp.2d 1118](#), clarified [2008 WL 4173623](#). [Antitrust And Trade Regulation](#) 📌 102; [Summary Judgment](#) 📌 177

In the context of a suit arising under ERISA, the traditional summary judgment practice of drawing inferences in favor of the nonmoving party is suspended where certain criteria are met, such as where review is based only on an agreed-upon administrative record, review is an ultimate conclusion as to disability, and there is no dispute over plan interpretation. [Stamp v. Metropolitan Life Ins. Co., D.R.I.2006, 466 F.Supp.2d 422](#), affirmed [531 F.3d 84](#), certiorari denied [129 S.Ct. 636](#), [555 U.S. 1062](#), [172 L.Ed.2d 639](#). [Summary Judgment](#) 📌 183

---- Administrative Procedure Act, construction with statutory provisions

Petition of nursing home that participated in Medicare program, seeking review of final decision of the Department of Health and Human Services (DHHS) Departmental Appeals Board upholding \$5,000.00 per-instance civil monetary fine that was imposed against it for noncompliance with minimum standards of care, would be reviewed under the deferential standards of the Administrative Procedure Act (APA), and not de novo, even though the agency decided the case on a motion for summary judgment without having an evidentiary hearing; giving heightened deference to administrative decisions is appropriate, even on appeal from summary judgment, because agencies have particular subject-matter experience and expertise, and are given more decisional latitude by legislatures than are trial courts. [Cedar Lake Nursing Home v. U.S. Dept. of Health and Human Services, C.A.5 2010, 619 F.3d 453](#). [Health](#) 📌 557(2)

When a party seeks review of agency action under the Administrative Procedure Act (APA), the entire case on review is a question of law such that judicial review of agency action is often accomplished by filing cross-motions for summary judgment; accordingly, the usual summary judgment standard does not apply in such cases, because the court is resolving legal questions when it determines if the agency acted in excess of statutory authorization, not in accordance with law, arbitrarily and capriciously, or in some other way that violates the APA. [Natural Resources Defense Council, Inc. v. U.S. Food and Drug Administration, S.D.N.Y.2022, 598 F.Supp.3d 98](#). [Administrative Law and Procedure](#) 📌 2003; [Administrative Law and Procedure](#) 📌 2005

In a case involving review of a final agency action under the Administrative Procedure Act (APA), the court's role is limited to reviewing the administrative record, and the standard set forth in the summary judgment rule does not apply; rather, under the APA, it is the role of the agency to resolve factual issues to arrive at a decision that is supported by the administrative record, whereas the function of the district court is to determine whether or not as a matter of law the evidence in the administrative record permitted the agency to make the decision it did. [Western Watersheds Project v. Bernhardt, D.Idaho 2021, 543 F.Supp.3d 958](#). [Administrative Law and Procedure](#) 📌 1392; [Administrative Law and Procedure](#) 📌 1831; [Administrative Law and Procedure](#) 📌 2005

Summary judgment standard set forth in federal procedural rule does not apply to district court's review of agency action under the Administrative Procedure Act (APA) because of the limited role of a court in reviewing the administrative record, rather, summary judgment in such a case is the mechanism for deciding whether as a matter of law the agency action is supported by the administrative record and is otherwise consistent with the APA standard of review. [Lane v. United States, S.D.Ga.2018, 338 F.Supp.3d 1324](#). [Administrative Law And Procedure](#) 📌 2005

Summary judgment is the proper mechanism for deciding, as a matter of law, whether an agency action is supported by the administrative record and consistent with the Administrative Procedure Act (APA) standard of review. [Loma Linda University Medical Center v. Sebelius](#), D.D.C.2010, 684 F.Supp.2d 42, affirmed 408 Fed.Appx. 383, 2010 WL 4903887. [Administrative Law And Procedure](#) 2004

In a case involving review of a final agency action under the Administrative Procedure Act (APA), the summary judgment standard does not apply because of the limited role of a court in reviewing the administrative record. [Hospital of University of Pennsylvania v. Sebelius](#), D.D.C.2009, 634 F.Supp.2d 9. [Administrative Law And Procedure](#) 2004

In a case involving review of a final agency action under the Administrative Procedure Act (APA), the summary judgment standard set forth in the Federal Rules of Civil Procedure does not apply because of the limited role of a court in reviewing the administrative record. [Decatur County Gen. Hosp. v. Johnson](#), D.D.C.2009, 602 F.Supp.2d 176. [Administrative Law And Procedure](#) 1741; [Administrative Law And Procedure](#) 2005

In a case involving review of a final agency action under the Administrative Procedure Act (APA), the standard set forth in the summary judgment rule does not apply because of the limited role of a court in reviewing the administrative record. [Hi-Tech Pharmacal Co., Inc. v. U.S. Food and Drug Admin.](#), D.D.C.2008, 587 F.Supp.2d 13. [Administrative Law And Procedure](#) 2005

When resolving a motion for summary judgment in a suit challenging a federal agency action, the court does not employ the standard of review set forth in the Federal Rules of Civil Procedure; rather, the standard of review is prescribed by the relevant statute and the Administrative Procedure Act. [Hays v. Leavitt](#), D.D.C.2008, 583 F.Supp.2d 62, affirmed 589 F.3d 1279. [Administrative Law And Procedure](#) 2005

In a case involving review of a final agency action under the Administrative Procedure Act (APA), the standard set forth in the rule governing summary judgments does not apply because of the limited role of a court in reviewing the administrative record. [North Carolina Fisheries Ass'n, Inc. v. Gutierrez](#), D.D.C.2007, 518 F.Supp.2d 62, subsequent determination 518 F.Supp.2d 105, appeal dismissed 550 F.3d 16, 384 U.S.App.D.C. 16. [Administrative Law And Procedure](#) 2005

Construction with constitutional provisions

In determining at summary judgment stage of ADEA action that employee did not produce sufficient evidence of disparate treatment to create genuine issue of material fact for trial, District Court did not make factual determination, and did not violate employee's Seventh Amendment right to trial by jury. [Riggs v. AirTran Airways, Inc.](#), C.A.10 (Kan.) 2007, 497 F.3d 1108. [Jury](#) 31.2(4)

A grant of a motion for summary judgment does not violate the non-movant's right to due process. [Burks v. Wisconsin Dept. of Transp.](#), C.A.7 (Wis.) 2006, 464 F.3d 744. [Constitutional Law](#) 4011

There was no violation of [U.S.C.A. Const.Amend. 7](#) relative to denial of plaintiff's demand for jury trial, because each postverdict ruling was within either power of court to enter directed verdict or summary judgment. [Gregg v. U.S. Industries, Inc.](#), C.A.11 (Fla.) 1983, 715 F.2d 1522, rehearing granted in part on other grounds, opinion clarified 721 F.2d 345, certiorari denied 104 S.Ct. 2173, 466 U.S. 960, 80 L.Ed.2d 556. [Jury](#) 31.2(4); [Jury](#) 34(3)

Where no genuine issue of material fact exists, court may, without violating [U.S.C.A.Const.Amend. 7](#) rights, grant summary judgment. [Shore v. Parklane Hosiery Co., Inc.](#), C.A.2 (N.Y.) 1977, 565 F.2d 815, certiorari granted 98 S.Ct. 1875, 435 U.S. 1006, 56 L.Ed.2d 387, affirmed 99 S.Ct. 645, 439 U.S. 322, 58 L.Ed.2d 552. [Jury](#) 31.2(4)

A grant of summary judgment does not in itself violate the Seventh Amendment right to jury trial. [Roberts v. USCC Payroll Corp.](#), N.D.Iowa 2009, 635 F.Supp.2d 948. [Jury](#) 31.2(4)

Party may not rely on its own testimony or affidavits to support its version of disputed fact issue in connection with summary judgment motion where party has asserted Fifth Amendment right not to answer questions concerning that very issue. [Pedrina v. Chun](#), D.Hawaii 1995, 906 F.Supp. 1377, affirmed 97 F.3d 1296, certiorari denied 117 S.Ct. 2441,

520 U.S. 1268, 138 L.Ed.2d 201. [Self-incrimination](#) 113; [Summary Judgment](#) 310; [Summary Judgment](#) 341

Construction with other Rules of Civil Procedure--Generally

Filing of groundless litigation for harassment or delay should be dealt with under [rules 16](#) and [36](#) of these rules and this rule relating to pretrial conferences, discovery, or summary judgment, not under rule 11 of these rules relating to signing of pleadings. [Chipanno v. Champion Intern. Corp., C.A.9 \(Or.\) 1983, 702 F.2d 827. Costs, Fees, And Sanctions](#) 1260; [Federal Civil Procedure](#) 660.1; [Federal Civil Procedure](#) 1261; [Federal Civil Procedure](#) 1921

Pleading rules, designed to avoid and reduce long and technical allegations, are necessarily supplemented by procedures, including summary judgment, which enable a party to have a judgment in a relatively short time if there is actually no bona fide claim presented. [A. T. Brod & Co. v. Perlow, C.A.2 \(N.Y.\) 1967, 375 F.2d 393. Summary Judgment](#) 2

Florida prohibition on disclosure of mediation communications did not apply to summary judgment affidavit of subcontractor's principal regarding how settlement in prior mediation of state court dispute was conducted by its surety that allegedly had conflict of interest by also being surety for contractor through its subsidiary, on summary judgment motion by surety in subcontractor's action alleging conspiracy with contractor to fraudulently conceal its valid claims and seeking damages for breach of its surety agreement, since statements disclosed in affidavit did not reveal confidential communications as to opposing parties at mediation, and surety raised defenses to subcontractor's claims that required examination of surety's conduct in settling underlying disputes in favor of contractor and against subcontractor. [Carles Const., Inc. v. Travelers Cas. & Sur. Co. of America, S.D.Fla.2014, 56 F.Supp.3d 1259, reconsideration denied 2014 WL 11798514. Privileged Communications and Confidentiality](#) 417

Summary judgment is not disfavored procedural shortcut, but rather, it is an integral part of the federal rules as a whole, which are designed to secure the just, speedy and inexpensive determination of every action. [Creech v. N.D.T. Industries, Inc., D.S.C.1993, 815 F.Supp. 165. Summary Judgment](#) 3

Attempting to obtain complete reversal of judgment by offering essentially same arguments presented in initial motion for summary judgment is inappropriate in vacation of motion to amend judgment. [Dana Corp. v. U.S., N.D. Ohio 1991, 764 F.Supp. 482. Federal Civil Procedure](#) 2655

In eminent domain proceeding, government's motion to dismiss tenants on ground that they were not real parties in interest was not controlled by rule 71A of these rules, which provides that "the court at any time may drop a defendant unnecessarily or improperly joined," but rather, was in effect motion for summary judgment against tenants. [U. S. v. 29.16 Acres, More or Less Valley Forge Nat. Historical Park, E.D.Pa.1980, 496 F.Supp. 924. Summary Judgment](#) 278(2)

If patent holder who was fully aware that equipment seller was bringing an antitrust cause of action along with declaratory judgment action on patent wanted a more precise and definite statement of antitrust cause of action he could proceed under [rule 12](#) of these rules relating to motions for more definite statement, discovery under rules 26 to 35 of these rules, summary judgment under this rule, and pretrial conference procedure, under [rule 16](#) of these rules. [Holmes v. Struthers Scientific & Intern. Corp., W.D.Pa.1967, 268 F.Supp. 122, 155 U.S.P.Q. 167. Federal Civil Procedure](#) 1120

[Rule 54](#) of these rules permitting final decision to be granted as to less than all claims in multiple claim action where there is no just reason for delay was applicable to motion for summary judgment in interpleader action involving priority of liens. [Dean Const. Co. v. Simonetta Concrete Const. Corp., S.D.N.Y.1965, 37 F.R.D. 242. Summary Judgment](#) 63

---- Admissibility of evidence, construction with other Rules of Civil Procedure

This rule, within restrictions, vests power in trial court to summarily decide whether or not its requirements have been met, its action, in such cases, necessarily being coextensive, with powers it is called on to exercise when it rules on admissibility of evidence in course of

regular trial. [Yoder v. Nutrena Mills, Inc., C.A.8 \(Iowa\) 1961, 294 F.2d 505. Summary Judgment 📌 72](#)

Declarant's statements failing to satisfy personal knowledge requirement cannot be admitted on motion for summary judgment under residual exception to the hearsay rule. [Hall v. C.I.A., D.D.C.2008, 538 F.Supp.2d 64. Summary Judgment 📌 315](#)

Principles governing admissibility of evidence do not change on motion for summary judgment. [Wurtzel v. Starbucks Coffee Co., E.D.N.Y.2003, 257 F.Supp.2d 520. Summary Judgment 📌 305](#)

When addressing summary judgment motion, district court may consider evidence that would not be admissible at trial only if court finds that evidence can be reduced to form that would be admissible. [Lawyers Alliance for Nuclear Arms Control-Philadelphia Chapter v. Department of Energy, E.D.Pa.1991, 766 F.Supp. 318. Summary Judgment 📌 305](#)

--- Amendment of pleadings, construction with other Rules of Civil Procedure

A party seeking to amend a pleading after a motion for summary judgment has been filed by its opponent faces a more stringent standard than is ordinarily applied under the liberal amendment policy of rule governing amended and supplemental pleadings. [Eisenberg v. Wall, D.Mass.2009, 607 F.Supp.2d 248. Federal Civil Procedure 📌 824; Federal Civil Procedure 📌 851](#)

--- Class actions, construction with other Rules of Civil Procedure

It was not improper for district court in employment discrimination case to decide merits prior to ruling on class certification, where early resolution of motion for summary judgment seemed likely to protect both parties and court from needless and costly further litigation. [Kim v. Commandant, Defense Language Institute, Foreign Language Center, C.A.9 \(Cal.\) 1985, 772 F.2d 521. Federal Civil Procedure 📌 184.10](#)

District court did not abuse its discretion in ruling on bank and title company defendants' motion for summary judgment without first ruling on plaintiffs' motion for class certification, where defendants consented to chosen procedure, which held promise of saving all parties considerable time and expense. [Wright v. Schock, C.A.9 \(Cal.\) 1984, 742 F.2d 541. Summary Judgment 📌 352](#)

Contentions which seek dismissal based upon failure to state a claim upon which relief may be granted are properly made pursuant to this rule concerning summary judgment or [rule 12](#) of these rules concerning motion to dismiss for failure to state a claim, not [rule 23](#) of these rules regarding dismissal of class action. [duPont v. Woodlawn Trustees, Inc., D.C.Del.1974, 64 F.R.D. 16. Federal Civil Procedure 📌 1772; Summary Judgment 📌 58](#)

--- Computation of time, construction with other Rules of Civil Procedure

Time constraints of rule governing motions to alter or amend judgment had no application to motion to reconsider grant of partial summary judgment, where court had never entered partial judgment dismissing claims. [Reyes Canada v. Rey Hernandez, D.Puerto Rico 2004, 221 F.R.D. 294. Federal Civil Procedure 📌 2658; Summary Judgment 📌 362](#)

A motion by plaintiff to strike affidavit supporting defendants' motion for summary judgment must be granted, where affidavit was not filed until day of hearing on defendants' motion, in view of [rule 6](#) of these rules that affidavit supporting motion should be served with motion. [Canning v. Star Publishing Co, D.C.Del.1956, 19 F.R.D. 281. Summary Judgment 📌 312](#)

--- Directed verdict, construction with other Rules of Civil Procedure

Party may move for summary judgment asserting that opposing party will not be able to produce sufficient evidence at trial to withstand directed verdict motion and if, after sufficient time for discovery, opposing party is unable to demonstrate that he or she can do so under applicable criteria, other summary judgment is appropriate. [Street v. J.C. Bradford & Co., C.A.6 \(Tenn.\) 1989, 886 F.2d 1472, rehearing denied. Summary Judgment 📌 77; Summary Judgment 📌 80](#)

In considering a motion for summary judgment under this rule, district court must give benefit of doubt to party who asserts he can prove dubious proposition at trial, while in considering a motion for directed verdict under [rule 50](#) of these rules, in contrast, district court has had benefit of seeing what parties alleged they could prove prior to trial tested in the crucible of open court; accordingly, district court is entitled to grant a directed verdict

even though some evidence supports the opposite position so long as there are no controverted issues of fact upon which reasonable minds could differ. [Kim v. Coppin State College, C.A.4 \(Md.\) 1981, 662 F.2d 1055. Federal Civil Procedure](#) 🗝️ 2121.1; [Summary Judgment](#) 🗝️ 74

Standard for granting summary judgment “mirrors” standard for directed verdict such that summary judgment is appropriate when there can be but one reasonable conclusion as to verdict; in making determination whether reasonable persons could differ as to evidence, court must consider whether nonmovant has put forth sufficient evidence to satisfy substantive evidentiary standard for its case. [Mid America Title Co. v. Kirk, N.D.Ill.1994, 867 F.Supp. 673, affirmed 59 F.3d 719, 35 U.S.P.Q.2d 1502, certiorari denied 116 S.Ct. 520, 516 U.S. 990, 133 L.Ed.2d 428. Federal Civil Procedure](#) 🗝️ 2141; [Summary Judgment](#) 🗝️ 50; [Summary Judgment](#) 🗝️ 80

When ruling upon motion for summary judgment after parties have had adequate time to develop their proof, court must consider motion as it would motion for judgment as a matter of law after plaintiff has presented his proof and rested his case; moving party must meet initial burden of showing absence of genuine issue of material fact as to essential element of nonmovant’s case, but if evidence does not present sufficient disagreement to require submission to jury and responding party has not adduced more than scintilla of evidence and record taken as a whole could not lead rational trier of fact to find for nonmovant, motion should be granted. [Wynn v. Morgan, E.D.Tenn.1994, 861 F.Supp. 622. Summary Judgment](#) 🗝️ 77; [Summary Judgment](#) 🗝️ 89; [Summary Judgment](#) 🗝️ 351

Question in ruling on motion for summary judgment and on motion for directed verdict is whether evidence presents sufficient disagreement to require submission to jury or whether it is so one-sided that one party must prevail as a matter of law. [Mercantile Bank of Kansas City v. U.S., W.D.Mo.1994, 856 F.Supp. 1355. Federal Civil Procedure](#) 🗝️ 2127; [Summary Judgment](#) 🗝️ 64; [Summary Judgment](#) 🗝️ 93

Standard for determining whether factual dispute is genuine, for purpose of summary judgment motion, is same as standard applied to motions for directed verdict: whether evidence is sufficiently at odds as to require jury to decide case, in that reasonable jury could find in favor of plaintiffs, or whether case is so one-sided that one party must prevail as matter of law. [Thomas v. FAG Bearings Corp. Inc., W.D.Mo.1994, 846 F.Supp. 1400. Summary Judgment](#) 🗝️ 46

To determine if summary judgment motion should be granted, court should use standard it would apply to motion for directed verdict, and, thus, court must determine that reasonable jury would be unable to return verdict for nonmoving party in order to enter summary judgment. [AMC Mortg. Co., Inc. v. Resolution Trust Corp., M.D.Tenn.1994, 846 F.Supp. 1323. Summary Judgment](#) 🗝️ 50

Standard for determining motion for summary judgment is same standard used to determine motion for directed verdict, i.e., does evidence present sufficient disagreement to require submission to jury or is it so one-sided that one party may prevail as matter of law? [Kennedy v. Vacation Internationale, Ltd., D.Hawaii 1994, 841 F.Supp. 986.](#)

District court applies to either party’s motion for summary judgment same standard as for motion for directed verdict, inquiring whether evidence presents sufficient disagreement to require submission to jury or whether it is so one-sided that one party must prevail as matter of law. [Hartman v. City of Petaluma, N.D.Cal.1994, 841 F.Supp. 946. Summary Judgment](#) 🗝️ 64; [Summary Judgment](#) 🗝️ 93

Summary judgment motion is made based on documentary evidence before trial, and directed verdict motion is made based on evidence submitted at trial. [Township of Stambaugh v. Ah-Ne-Pee Dimensional Hardwood, Inc., W.D.Mich.1993, 841 F.Supp. 803.](#)

Summary judgment standard mirrors standard for directed verdict which is that trial judge must direct verdict if, under the governing law, there can be but one reasonable conclusion as to the verdict. [Save Our Health Organization v. Recomp of Minnesota, Inc., D.Minn.1993, 829 F.Supp. 288, affirmed 37 F.3d 1334. Summary Judgment](#) 🗝️ 50

In essence, inquiry on summary judgment is whether evidence presents sufficient disagreement to require submission to jury, or whether evidence is so one-sided that one party must prevail as a matter of law, viewing all inferences to be drawn from the facts in

light most favorable to the opposing party. [Leathers v. Peoria Toyota-Volvo, C.D.Ill.1993, 824 F.Supp. 155. Summary Judgment](#) 75; [Summary Judgment](#) 93

Standard for summary judgment mirrors standard for directed verdict; consequently, nonmovant must do more than raise some doubt as to existence of fact but must produce evidence that would be sufficient to require submission of issue to jury. [Greenan v. Romeo Village Police Dept., E.D.Mich.1993, 819 F.Supp. 658. Summary Judgment](#) 80

Standard for judging motion for summary judgment is the same standard used to judge motion for directed verdict: whether evidence presents sufficient disagreement to require submission to jury or is so one-sided that one party must prevail as a matter of law. [Mateo v. M/S KISO, N.D.Cal.1992, 805 F.Supp. 792. Summary Judgment](#) 64; [Summary Judgment](#) 93

Standard for summary judgment mirrors standard for directed verdict; consequently, nonmovant must do more than raise some doubt as to existence of fact; nonmovant must produce evidence that would be sufficient to require submission to jury of dispute over fact. [Smith v. Detroit Edison Co., E.D.Mich.1992, 793 F.Supp. 151. Summary Judgment](#) 1; [Summary Judgment](#) 77

Test for granting summary judgment motion parallels standard for directed verdict; if evidence is such that reasonable finder of fact could return verdict for nonmoving party, then there is genuine factual dispute and summary judgment should not be granted. [Toyomenka Pacific Petroleum, Inc. v. Hess Oil Virgin Islands Corp., S.D.N.Y.1991, 771 F.Supp. 63. Summary Judgment](#) 50; [Summary Judgment](#) 93

---- Discovery and inspection, construction with other Rules of Civil Procedure

District Court could grant summary judgment in favor of defendant prior to requiring defendant to answer plaintiff's discovery requests, where discovery requests were served upon defendant after the completion of discovery deadline, and plaintiff failed to submit affidavit stating that he could not present essential facts to justify his opposition to summary judgment motion. [Thomas v. Pacificorp, C.A.10 \(Utah\) 2003, 324 F.3d 1176. Summary Judgment](#) 344

Rule 34 of these rules requiring party moving for production of books and records to show good cause and rule 43(b) of these rules permitting defendant to interrogate complainant cannot be used, singly or together, to circumvent express requirements of this rule and [rule 12\(b\)](#) of these rules converting motion to dismiss into motion for summary judgment if movant goes outside pleadings to prove his affirmative defense. [Herron v. Herron, C.A.5 \(Tex.\) 1958, 255 F.2d 589. Summary Judgment](#) 278(2)

Rule 26 of these rules, limiting scope of examination before trial to relevant matter not privileged, has no such extensive application as to control or largely nullify this rule concerning summary judgments. [Engl v. Aetna Life Ins. Co., C.C.A.2 \(N.Y.\) 1943, 139 F.2d 469. Federal Civil Procedure](#) 38

When ruling on patent infringement plaintiff's motion for summary judgment of validity, court would not consider challenges to patent's validity for which defendant had failed to provide any discovery. [Genlyte Thomas Group LLC v. National Service Industries, Inc., W.D.Ky.2003, 262 F.Supp.2d 762. Patents](#) 1937

Electric utility's motion for summary judgment in suit against the government for breach of standard contract for disposal of spent nuclear fuel (SNF) would be denied insofar as it requested damages, where government had no opportunity to conduct discovery specifically related to allegations of damages, such that Court of Federal Claims could not determine that no genuine dispute of material fact existed as to amount of damages or that utility was entitled to damages as a matter of law. [Tennessee Valley Authority v. U.S., Fed.Cl.2004, 60 Fed.Cl. 665. United States](#) 1061(2)

---- Dismissal, construction with other Rules of Civil Procedure

District court did not abuse its discretion in denying shareholder's motions to compel discovery prior to granting motion for summary dismissal of derivative suit based on special litigation committee's (SLC) judgment, where defendants provided final SLC report, all documents relied on by SLC to produce that report, board minutes regarding formation and appointment of SLC, and SLC members for deposition, and shareholder did not claim that he could not present facts in response to motion for summary dismissal essential to its

opposition. [Sarnacki v. Golden, C.A.1 \(Mass.\) 2015, 778 F.3d 217. Summary Judgment 352](#)

Rule that consideration of extraneous material causes a motion to dismiss to be translated into a motion where summary judgment is mandatory. [Cortec Industries, Inc. v. Sum Holding L.P., C.A.2 \(N.Y.\) 1991, 949 F.2d 42, certiorari denied 112 S.Ct. 1561, 503 U.S. 960, 118 L.Ed.2d 208. Summary Judgment 278\(2\)](#)

Issue of standing, raised as a factual challenge to subject matter jurisdiction, was properly addressed in context of summary judgment rather than on motion to dismiss retaliation claims of Air Force member, who would be permitted to conduct limited discovery on issues relevant to causation prong of standing inquiry so that district court could fully evaluate standing. [Adkins v. Rumsfeld, D.Del.2006, 450 F.Supp.2d 440. Federal Civil Procedure 1264](#)

Given that failure to exhaust administrative remedies pursuant to Prison Litigation Reform Act (PLRA) was affirmative defense, and that exhaustion did not have to be pleaded by inmate to state *Bivens* claim, issue of whether federal inmate proceeding pro se satisfied exhaustion requirement was more properly addressed under summary judgment standard, rather than via motion to dismiss for failure to state claim, so as to give inmate opportunity to rebut contention that he failed to exhaust his administrative remedies. [Williams v. Metropolitan Detention Center, E.D.N.Y.2005, 418 F.Supp.2d 96. Federal Civil Procedure 1752.1](#)

In a case where the parties dispute facts material to a jurisdictional time limit, Rules of Civil Procedure governing summary judgment and failure to state claim upon which relief can be granted require that the court provide the parties a full opportunity to air the factual dispute; the importance of fair procedures in factfinding at any stage requires this approach, whether or not the parties invoke the precise words in the Federal Rules. [Flynn v. Ohio Building Restoration, Inc., D.D.C.2003, 260 F.Supp.2d 156. Federal Civil Procedure 1831; Summary Judgment 341](#)

District Court hearing state university officials' motion for summary judgment on former employee's civil rights claims would not consider officials' request to dismiss employee's pleadings. [Modesto v. Lehman, D.Puerto Rico 2002, 245 F.Supp.2d 340. Summary Judgment 301](#)

Summary judgment motion, rather than motion to dismiss for subject matter jurisdiction, was appropriate motion for viatical settlement company to request dismissal of action by Securities and Exchange Commission (SEC) alleging that interests in life insurance policies sold by company were "securities" subject to federal securities laws. [S.E.C. v. Life Partners, Inc., D.D.C.1997, 986 F.Supp. 644. Federal Courts 2349; Summary Judgment 235](#)

Motions to dismiss complaint and to enter summary judgment are the proper means of testing the merits of case prior to trial. [Guarantee Ins. Agency Co. v. Mid-Continental Realty Corp., N.D.Ill.1972, 57 F.R.D. 555. Federal Civil Procedure 1825; Summary Judgment 273](#)

---- Judgment on pleadings, construction with other Rules of Civil Procedure

Motion for summary judgment under [rule 12\(c\)](#) of these rules is to be treated exactly like this rule and thus motion cannot be granted if there is any genuine issue of material fact upon which reasonable men might reach different conclusions. [Government of India v. Cargill, Inc., S.D.N.Y.1978, 445 F.Supp. 714. Summary Judgment 45\(1\)](#)

[Rule 12](#) of these rules is inapplicable to motions to strike affidavits or portions thereof, such as affidavits supporting motion for summary judgment because of non-compliance with subd. (e) of this rule. [Ernst Seidelman Corp. v. Mollison, S.D.Ohio 1950, 10 F.R.D. 426.](#)

---- Local rules, construction with other rules of civil procedure

District court would accept city's statement of facts, in which it relied entirely on single three-page declaration, in support of its motion for summary judgment in arrestee's [§ 1983](#) action, even though city's filing violated local civil procedural rule requiring that each fact cite to specific page or paragraph of record where fact was found, where source of each alleged fact was easily identifiable. [Farris v. Culp, E.D.Wash.2022, 645 F.Supp.3d 1058. Summary Judgment 289](#)

---- More definite statement, construction with other Rules of Civil Procedure

In view of means afforded a defendant by this rule and [rule 12](#) of these rules to obtain speedy disposition of a plaintiff's claim without foundation or substance, either by securing more definite statement or bill of particulars and thereafter applying for judgment on pleadings or by moving for summary judgment, dismissal of complaint for insufficiency of statement is not justified, unless it appears to a certainty that plaintiff would be entitled to no relief under any state of facts which could be proved in support of claim. [Sidebotham v. Robison, C.A.9 \(Cal.\) 1954, 216 F.2d 816. Federal Civil Procedure](#) 🗝️ 1773

---- Pretrial conference, construction with other Rules of Civil Procedure

Functions of the pretrial conference of [rule 16](#) of these rules and the summary judgment motion are entirely different, they complement one another, and each serves its own special purpose. [Irving Trust Co. v. U.S., C.A.2 \(N.Y.\) 1955, 221 F.2d 303, certiorari denied 76 S.Ct. 59, 350 U.S. 828, 100 L.Ed. 740. Federal Civil Procedure](#) 🗝️ 1922; [Summary Judgment](#) 🗝️ 2

Alleged infringers lacked good cause for their failure to move in timely manner for summary judgment of invalidity based on anticipation by prior patent, and infringers thus were not entitled to relief from deadline in case management order for filing dispositive motions involving claim construction, where multiple patents-in-suit disclosed prior patent as cited reference. [Rambus Inc. v. Hynix Semiconductor Inc., N.D.Cal.2008, 628 F.Supp.2d 1114. Patents](#) 🗝️ 1756

Alleged infringers could not have filed motion for summary judgment of invalidity with respect to prior patent which allegedly anticipated patentee's claims by deadline in case management order, and thus infringers established good cause for relief from order; patent was not cited in prosecution history and infringers did not know of prior patent when order's deadline for dispositive motions involving claim construction passed. [Rambus Inc. v. Hynix Semiconductor Inc., N.D.Cal.2008, 628 F.Supp.2d 1114. Patents](#) 🗝️ 1753

---- Striking of pleadings, construction with other Rules of Civil Procedure

Where plaintiff's opposition to defendant's motion for summary judgment was contained in a cross motion to strike the "defendant's pleadings," made under [rule 12](#) of these rules, directed solely to "pleadings," motion would be denied. [Sauls v. Bristol-Myers Co., S.D.N.Y.1978, 462 F.Supp. 887. Summary Judgment](#) 🗝️ 286

Construction with appellate rules

Once notice of appeal had been filed, it was only by motion for relief from judgment that prison inmate could attack, in district court, its order dismissing his civil rights claims; inmate's motion for summary judgment, adopting arguments incorporated in motion for relief from judgment, was not one that district court had jurisdiction to address as improper attempt to obtain relief from final judgment by means other than those provided by Federal Rules of Civil Procedure. [Mahone v. Ray, C.A.11 \(Ga.\) 2003, 326 F.3d 1176. Federal Courts](#) 🗝️ 3454

Construction with Bankruptcy Rules

Standards of the Federal Rule of Civil Procedure governing summary judgment apply to summary judgment in bankruptcy proceedings. [Dick ex rel. Amended Hilbert Residence Maintenance Trust v. Consecro, Inc., C.A.7 \(Ill.\) 2006, 458 F.3d 573. Bankruptcy](#) 🗝️ 2164.1

In proceeding brought by debtor developer against association and purchasers of interests in land concerning right of debtor to reject interests as executory land sale contracts, it was appropriate to forego use of this rule, and rule 756, Rules of Bankruptcy Procedure, Title 11, governing summary judgment and to proceed under rule 914. Rules of Bankruptcy Procedure, Title 11, governing contested matters in that time was short, sale of land could not go forward absent resolution of executory contract issues, sale was critical to reorganization of debtor, land was not easily marketed, and there was willing purchaser who, because of state budgetary strictures, had to close by a certain date, and purchasers and association were not prejudiced. [In re Summit Land Co., Bkrcty.D.Utah 1981, 13 B.R. 310. Bankruptcy](#) 🗝️ 2164.1

Construction with Rules of Criminal Procedure

Suppression motion is equivalent to motion for summary judgment in civil cases; where motion and response establish that there are no disputed issues of material fact, motion may be granted or denied on record without evidentiary hearing. [U.S. v. Cheely, D.Alaska](#)

1992, 814 F.Supp. 1447, affirmed 21 F.3d 914, affirmed 36 F.3d 1439. [Criminal Law](#) 392.46(1); [Criminal Law](#) 392.50

Construction with local rules

Defendants' opposition to plaintiffs' statement of uncontested facts (SUF) which was submitted in support of plaintiff's motion for summary judgment did not comply with local anti-ferret rule, requiring party opposing a summary judgment motion to controvert facts in the SUF by reference to each numbered paragraph in the SUF; the plaintiffs' SUF contained 88 numbered paragraphs of fact, while the defendants' opposition comprised 25 numbered paragraphs, divided into five, separately numbered sections, and repeatedly lumped responses to several separately declared facts into a single sentence. [Puerto Rico American Ins. Co. v. Rivera-Vazquez, C.A.1 \(Puerto Rico\) 2010, 603 F.3d 125, on remand 867 F.Supp.2d 216. Summary Judgment 286; Summary Judgment 289; Summary Judgment 351](#)

In the event that a party opposing summary judgment fails to act in accordance with the rigors that a local court rule imposes for submission of a statement of facts, a district court is free, in the exercise of its sound discretion, to accept the moving party's facts as stated. [Caban Hernandez v. Philip Morris USA, Inc., C.A.1 \(Puerto Rico\) 2007, 486 F.3d 1. Summary Judgment 289](#)

District court did not abuse its discretion by discounting, or refusing to consider, most additional facts submitted by plaintiff employee as part of response to defendant employer's motion for summary judgment of employee's FLSA suit; employee had failed to list additional facts in separate statement-of-facts document, as required by local rule. [Cichon v. Exelon Generation Co., L.L.C., C.A.7 \(Ill.\) 2005, 401 F.3d 803. Summary Judgment 271; Summary Judgment 282; Summary Judgment 289](#)

District court should not have entered summary judgment for employer in age discrimination suit solely as sanction for employee's failure to respond to summary judgment motion within time allowed under local rules. [De La Vega v. San Juan Star, Inc., C.A.1 \(Puerto Rico\) 2004, 377 F.3d 111. Summary Judgment 282](#)

District court's local rule stating that a judge considering a motion for summary judgment is not required to review portions of the record in response to a motion where the moving papers do not make specific reference to such portions of the record did not provide sufficient notice to nonmovants of rule requiring citations to the record to allow district court to grant motion for summary judgment as a sanction for nonmovants' failure to include citations to record in their responsive papers. [Amnesty America v. Town of West Hartford, C.A.2 \(Conn.\) 2002, 288 F.3d 467. Summary Judgment 351](#)

Alleged trademark infringer, as defendant to summary judgment motion, was not precluded from challenging trademark holder's version of events in answer brief on basis of alleged infringer's failure to comply with local rule; although alleged infringer deviated from requirements of local rule in important respects, district court did not rely on those imperfections in issuing its order and trademark holder did not present that argument in its reply brief. [Vittoria North America, L.L.C. v. Euro-Asia Imports Inc., C.A.10 \(Okla.\) 2001, 278 F.3d 1076, 61 U.S.P.Q.2d 1001. Summary Judgment 290](#)

Local rule requiring party to serve evidence in opposition to motion for summary judgment 14 days before hearing on motion was consistent with federal rule and, thus, valid, even though federal rule provides that opposing party may serve affidavits "prior to the day of the hearing"; federal rule does not unconditionally require district court to accept affidavits up to date set for hearing, but, rather, allows district courts to adopt procedures pursuant to which nonmoving party may oppose motion prior to hearing date, and local rule in no way eliminated opportunity to oppose motion, but, instead, placed condition on that right. [Marshall v. Gates, C.A.9 \(Cal.\) 1995, 44 F.3d 722, as amended. Federal Civil Procedure 25; Summary Judgment 284](#)

Local rule that requires entry of summary judgment simply if no papers opposing motion are filed or served, and without regard to whether genuine issues of material fact exist, would be inconsistent with summary judgment rule and, thus, would violate federal rule that allows local rules only if they are "not inconsistent" with federal rules. [Henry v. Gill Industries, Inc., C.A.9 \(Ariz.\) 1993, 983 F.2d 943. Federal Civil Procedure 25; Summary Judgment 282; Summary Judgment 351](#)

Where local rule did not explicitly provide sanction for failing to file response to an opposed motion but district court held that failure to file written response to motion would result in automatic grant of that motion, without regard to merits or to Federal Rules of Civil Procedure, such construction of local rule rendered it inconsistent with Federal Rule of Civil Procedure and such construction by the district court was therefore to be rejected. [John v. State of La. \(Bd. of Trustees for State Colleges and Universities\), C.A.5 \(La.\) 1985, 757 F.2d 698. Federal Civil Procedure](#) 📌 25

Security software provider's motion for summary judgment on software reseller's affirmative defense of estoppel to provider's breach of contract claim addressed only one aspect of affirmative defense of estoppel, and thus provider was not entitled to summary judgment on that affirmative defense; although provider sought summary judgment as to entire defense, provider's assertion that estoppel was based only on false statements related to pricing and upsell commissions ignored fact that reseller clearly disclosed, in both its answer and its District of Arizona's Mandatory Initial Discovery Pilot Project (MIDP) disclosures, that estoppel defense was based in part on provider's practice of sending invoices and accepting payments based on product activations. [SiteLock LLC v. GoDaddy.com LLC, D.Ariz.2022, 562 F.Supp.3d 283. Summary Judgment](#) 📌 277(2)

District court would strike portion of resident's response to city's renewed motion for summary judgment, requesting additional discovery, as well as affidavit of resident's counsel; local rules prohibited the inclusion of a motion within a response, district court re-opened discovery on a limited basis, and resident did not move for leave to file an additional dispositive motion or to supplement his response further. [Hamer v. City of Trinidad, D.Colo.2020, 441 F.Supp.3d 1155. Summary Judgment](#) 📌 345; [Summary Judgment](#) 📌 365

Claimants' boilerplate denials, based on hearsay and lack of knowledge, in opposition to automobile insurers' motion for summary judgment, violated local rule requiring denials to be supported with particularized citations to record, and thus district court would treat insurers' statement of facts as uncontested, in insurers action alleging that claimants engaged in a scheme to defraud insurers by submitting false insurance claims in violation of the Racketeer Influenced and Corrupt Organizations Act (RICO). [Puerto Rico American Ins. Co. v. Burgos, D.Puerto Rico 2011, 867 F.Supp.2d 216. Summary Judgment](#) 📌 289

Motion for summary judgment would be dismissed where movant failed to comply with local rule providing that party moving for summary judgment include in brief a separate statement of material facts; although section of brief was labeled "statement of uncontroverted facts," it consisted of arguments and legal conclusions, and although facts were scattered throughout movant's brief, those facts would be disregarded since opposing party was only required to respond to facts in separate statement. [LOL Finance Co. v. Paul Johnson & Sons Cattle Co., Inc., D.Neb.2010, 758 F.Supp.2d 871. Summary Judgment](#) 📌 289

A district court may in its discretion opt to conduct assiduous review of record on summary judgment even where one of the parties has failed to file statement of undisputed facts as required by local rules. [M & T Mortg. Corp. v. White, E.D.N.Y.2010, 736 F.Supp.2d 538. Summary Judgment](#) 📌 271; [Summary Judgment](#) 📌 289

Plaintiff was not entitled to relief from entry of summary judgment as conceded in his Freedom of Information Act (FOIA) action against Drug Enforcement Administration (DEA), on basis that his right to due process was violated by granting summary judgment even though his complaint raised "genuine issues of material fact"; plaintiff failed to file timely opposition to summary judgment motion, as required by local Court rule, before granting summary judgment as conceded, court granted plaintiff multiple extensions of time to file opposition, and court did not grant motion as conceded until more than two months after plaintiff's final deadline for filing an opposition. [Marino v. Drug Enforcement Admin., D.D.C.2010, 729 F.Supp.2d 237, motion to amend denied 2011 WL 13339975, reversed and remanded 685 F.3d 1076, 401 U.S.App.D.C. 452. Federal Civil Procedure](#) 📌 2651.1

On motion for summary judgment, district court would exercise its discretion to overlook plaintiff's failure to comply with local rule requiring plaintiff to file and serve response to defendants' statements of facts, and would deem admitted only those facts in defendants' statements that were supported by admissible evidence and not controverted by other admissible evidence in the record; plaintiff did provide some outline of her factual position in

her opposition papers with some citation to the factual record, and both the court and defendants were thus able to discern the factual evidence upon which plaintiff attempted to rely to create material issues of disputed fact to overcome summary judgment. [Mauro v. Countrywide Home Loans, Inc., E.D.N.Y.2010, 727 F.Supp.2d 145. Summary Judgment](#) 📌 289

If the party opposing a summary judgment motion fails to comply with the local rule requiring a separate statement of genuine issues of material fact, the district court is under no obligation to sift through the record and should instead deem as admitted the moving party's facts that are uncontroverted by the nonmoving party's statement. [Qatar Nat. Bank v. Winmar, Inc., D.D.C.2009, 650 F.Supp.2d 1. Summary Judgment](#) 📌 289; [Summary Judgment](#) 📌 351

Given that plaintiffs in medical malpractice action failed to deny, affirm, or qualify defendants' statement of uncontested facts, the facts therein would be deemed admitted for purposes of application of local rule governing motions for summary judgment. [Feliciano v. Diaz, D.Puerto Rico 2009, 641 F.Supp.2d 120. Summary Judgment](#) 📌 282; [Summary Judgment](#) 📌 289

Plaintiff's opposition to summary judgment including sworn statement that controverted, in numbered paragraphs, statements of material facts included in defendant's summary judgment motion would be accepted as properly filed, even though opposition lacked record citations required by local rule, since lack of record citation did not preclude determination of whether there were triable issues of material fact, and did not force district court to ferret through records. [Zabala-Calderon v. U.S., D.Puerto Rico 2008, 616 F.Supp.2d 195. Summary Judgment](#) 📌 286; [Summary Judgment](#) 📌 289; [Summary Judgment](#) 📌 351

Although the plaintiffs's failure to provide a statement of contested material facts does not automatically warrant the granting of summary judgment, pursuant to local rule, it launches plaintiff's case down the road towards an easy dismissal, since district court need only examine whether, given the uncontested facts that were deemed admitted, defendants are entitled to judgment as a matter of law. [Nohemi Melendez v. Hospital Hermanos Melendez, Inc., D.Puerto Rico 2008, 608 F.Supp.2d 196. Summary Judgment](#) 📌 289

Alleged errors and inconsistencies in information supplied by employer to Massachusetts Commission Against Discrimination (MCAD) and court did not together entitle fired employee to summary judgment in discrimination and retaliation action, apart from substance and merits of his claims; even if alleged misrepresentations affected credibility of MCAD and Equal Employment Opportunity Commission (EEOC) findings that employee's claims were meritless, rule governing relief from final judgment, order or proceeding did not relieve employee from proving merits of his claim, and motion for Rule 11 sanctions, not summary judgment, was appropriate remedy for alleged misrepresentation by employer. [Parra v. Four Seasons Hotel, D.Mass.2009, 605 F.Supp.2d 314. Civil Rights](#) 📌 1430; [Costs, Fees, And Sanctions](#) 📌 1275; [Summary Judgment](#) 📌 117(1)

Even if a non-movant fails to follow local summary judgment rules, summary judgment may not be granted if the movant has not met its burden under the Federal Rules of Civil Procedure. [Lee v. City of Syracuse, N.D.N.Y.2009, 603 F.Supp.2d 417. Summary Judgment](#) 📌 351

District court would adhere strictly to text of local civil rule requiring parties to submit statements of material fact in support of motions for summary judgment, in administrative review case brought by former military members and dual status technicians of Puerto Rico Army National Guard against the United States of America, the Secretary of the Army, and the Chief of the National Guard Bureau challenging defendants' refusal to order Puerto Rico officials to reinstate technicians into the Army National Guard and to correct technicians' National Guard records to show that they were never discharged. [Association of Civilian Technicians, Inc. v. U.S., D.D.C.2009, 601 F.Supp.2d 146, affirmed 603 F.3d 989, 390 U.S.App.D.C. 260. Militia](#) 📌 10; [Militia](#) 📌 12; [Public Employment](#) 📌 791; [Summary Judgment](#) 📌 289

District court has broad discretion to overlook a party's failure to comply with local court rules, and may opt to consider an assiduous review of the record, even in cases where a party fails to comply with the local rules governing submissions in a summary judgment proceeding. [Transportation Ins. Co. v. AARK Const. Group, Ltd., E.D.N.Y.2007, 526](#)

[F.Supp.2d 350](#). [Federal Civil Procedure](#) 📌 25; [Summary Judgment](#) 📌 271; [Summary Judgment](#) 📌 277(1); [Summary Judgment](#) 📌 287

Court did not abuse its discretion by denying motion to strike for failure of opponent to comply with letter or spirit of local civil procedure rule, since intensive line by line review of opponent's violations of rule would have done little to assist court in achieving goals of local rule or resolving merits of pending cross-motions for summary judgment. [Burchill v. Unum Life Ins. Co. of America](#), D.Me.2004, 327 F.Supp.2d 41. [Summary Judgment](#) 📌 292

African-American employee's statement in opposition to employer's motion for summary judgment on race discrimination claims would not be dismissed for failure to comply with local rule requiring non-moving party to submit a paragraph-by-paragraph response to movant's statement of material facts, where employee's 56-page statement complied with the spirit of the rule by citing to the record and made it clear that there were disputed issues of material fact. [Kennedy v. J.P. Morgan Chase & Co.](#), S.D.N.Y.2004, 325 F.Supp.2d 401. [Summary Judgment](#) 📌 286; [Summary Judgment](#) 📌 289

Trustee failed to comply with local rule requiring movant to certify that parties had made good-faith effort to resolve dispute, warranting dismissal of trustee's motion seeking summary judgment on claims for breach of contract, breach of fiduciary duty, and violation of Oregon Unfair Trade Practices Act based on stockbroker and brokerage house's alleged wrongful retention of approximately \$14,000 of trust's assets, given showing that trustee ignored repeated attempts by stockbroker and brokerage house to resolve issue without involving the court, and that trustee gave less than one day's notice of summary judgment motion and rebuffed two prompt offers of simple resolution. [Thompson ex rel. Thorp Family Charitable Remainder Unitrust v. Federico](#), D.Or.2004, 324 F.Supp.2d 1152. [Summary Judgment](#) 📌 277(1); [Summary Judgment](#) 📌 351

Where neither patent infringement plaintiff's and defendant's cross-motions for summary judgment, nor their respective reply briefs, conformed to requirements of local rules, their submissions would be stricken and re-briefing would be allowed. [Canady v. Erbe Elektromedizin GmbH](#), D.D.C.2004, 307 F.Supp.2d 2. [Patents](#) 📌 1937

While nonmovant's memorandum bypassed local summary judgment rule by referring directly to evidentiary support, her affidavit, rather than opposing statement of material facts, technical deficiencies would not cause her to lose on her claims as neither party was misled about arguments or supporting evidentiary submissions. [Martin v. Inhabitants of City of Biddeford](#), D.Me.2003, 261 F.Supp.2d 34. [Summary Judgment](#) 📌 290

Compliance with local rule requiring that a party moving for summary judgment submit, in support of the motion, "a separate, short concise statement of material facts as to which the moving party contends there is no genuine issue to be tried and the basis of such contention as to each material fact, properly supported by specific reference to the record" is critical, given that the court will only consider the facts alleged in such statements when entertaining the movant's arguments. [Euromodas, Inc. v. Zanella, Ltd.](#), D.Puerto Rico 2003, 253 F.Supp.2d 201, affirmed 368 F.3d 11. [Summary Judgment](#) 📌 277(1); [Summary Judgment](#) 📌 289

Summary judgment motion in negligence action, in which statement of undisputed facts contained no citations to record, instead directing court to body of movant's argument and references to record contained therein, failed to comply with local rules requiring that statement include references to parts of record relied upon for support. [Robertson v. American Airlines, Inc.](#), D.D.C.2002, 239 F.Supp.2d 5. [Summary Judgment](#) 📌 289

Plaintiff's initial response to motion for summary judgment failed to conform to local rule of court practice, requiring responses to summary judgment motions to expressly admit, deny, or qualify statements of material fact and to state any additional material facts that plaintiff contended precluded summary judgment, in numbered paragraphs, with specific references to the record supporting each statement, where plaintiff submitted lengthy brief without any specific references to the record. [Northwest Bank & Trust Co. v. First Illinois Nat. Bank](#), S.D.Iowa 2002, 221 F.Supp.2d 1000, affirmed in part, reversed in part and remanded 354 F.3d 721. [Summary Judgment](#) 📌 286

In summary judgment motion proceedings, plaintiff did not proffer legal brief explaining why facts cited in supplemental statements of material facts were relevant or could not have

been submitted in plaintiff's opposing statement as required by local summary judgment rule, and, thus, court would not consider such materials. [Liston v. Unum Corp. Officer Severance Plan](#), D.Me.2002, 211 F.Supp.2d 222, affirmed 330 F.3d 19. [Summary Judgment](#) 📌 289

Under local rule, party who fails to file timely objection to motion is deemed to have waived objection; however, federal rule requires court to examine merits of motion for summary judgment even though nonmoving party fails to object as required by local rule. [Redman v. F.D.I.C.](#), D.Me.1992, 794 F.Supp. 20. [Summary Judgment](#) 📌 292

Court declined to enforce local summary judgment rule which required that, in order for facts contained in supporting or opposing statement of material facts to be considered for summary judgment purposes, they must be followed by a citation to the specific page or paragraph of identified record material supporting the assertion; although defendant was correct that plaintiff had failed to provide citations required by rule, defendant committed exact same error, and court was left with no properly submitted factual background on which to decide the motion for summary judgment. [Ramos-Figueroa v. DWB Holding Co.](#), D.Puerto Rico 2010, 269 F.R.D. 148. [Summary Judgment](#) 📌 289

Construction with state law and rules

Florida anti-SLAPP fee-shifting provision did not conflict with any federal rules of civil procedure, and thus could be applied in a federal court exercising diversity jurisdiction, where the provision did not raise bar for a plaintiff to overcome a pretrial dismissal motion, instead the provision entitled a prevailing party to attorney fees and costs after determination of an action being "without merit." Fla. Stat. Ann. [Bongino v. Daily Beast Company, LLC](#), S.D.Fla.2020, 477 F.Supp.3d 1310. [Federal Courts](#) 📌 3033(2)

District Court was not precluded from considering unpublished California state court opinions on summary judgment in plaintiff's class action against restaurant operator arising out of surcharges applied to restaurant bills; even if California's state court rules precluded citation or reliance on unpublished state opinions, federal court could consider them, even if they had no precedential value. [Holt v. Noble House Hotels & Resort, Ltd.](#), S.D.Cal.2019, 370 F.Supp.3d 1158. [Courts](#) 📌 107

Purpose--Generally

The rule governing summary judgment, which provides granting such a motion is appropriate when the movant shows "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law," contemplates that the court will sometimes deny the motion because the facts are genuinely in dispute and other times because the law does not support the movant's position. [Dupree v. Younger](#), U.S.2023, 143 S.Ct. 1382, 598 U.S. 729, 215 L.Ed.2d 636, on remand 2024 WL 3025121. [Summary Judgment](#) 📌 45(2)

Neither notice pleading requirements nor standards which govern dismissals for failure to state claim upon which relief can be granted require claimant to set out in detail facts upon which he bases his claim, but pretrial proceedings such as summary judgment and motion for more definite statement are appropriate devices to narrow issues and disclose boundaries of claim and defense. [Williams v. United Credit Plan of Chalmette, Inc.](#), C.A.5 (La.) 1976, 526 F.2d 713. [Federal Civil Procedure](#) 📌 673; [Federal Civil Procedure](#) 📌 943; [Summary Judgment](#) 📌 2

One of the purposes of summary judgment is to determine whether the parties can provide evidentiary support for their version of the facts, and if a party has credible evidence for its position, it must make the existence of such evidence known, because summary judgment cannot be defeated by the vague hope that something may turn up at trial. [E. P. Hinkel & Co., Inc. v. Manhattan Co.](#), C.A.D.C.1974, 506 F.2d 201, 165 U.S.App.D.C. 140. [Summary Judgment](#) 📌 2; [Summary Judgment](#) 📌 277(1)

Prime purpose of summary judgment procedure is to secure just, speedy, and inexpensive determination of any action. [Albatross Shipping Corp. v. Stewart](#), C.A.5 (La.) 1964, 326 F.2d 208. [Summary Judgment](#) 📌 2

Summary judgment procedure is a liberal measure designed for arriving at truth by testing whether litigants really have evidence which they will offer on trial, by inquiring and

determining in advance of trial whether such evidence exists. [Slagle v. U.S., C.A.5 \(Tex.\) 1956, 228 F.2d 673. Summary Judgment](#) 🗝️ 2

Purpose of summary judgment is to enable trial court to readily dispose of cases on matters of law where it becomes evident no material controversy of fact remains. [Rohner v. Union Pac. R. Co., C.A.10 \(Colo.\) 1955, 225 F.2d 272](#). See, also, [Valdosta Livestock Co. v. Williams, D.C.N.C.1962, 31 F.R.D. 528, appeal dismissed 316 F.2d 188. Summary Judgment](#) 🗝️ 2

This rule providing for summary judgment was not designed to permit trial of real and genuinely contested issues of fact by affidavits. [Suckow Borax Mines Consol. v. Borax Consol., C.A.9 \(Cal.\) 1950, 185 F.2d 196, certiorari denied 71 S.Ct. 506, 340 U.S. 943, 95 L.Ed. 680, rehearing denied 71 S.Ct. 620, 341 U.S. 912, 95 L.Ed. 1349. Summary Judgment](#) 🗝️ 2

The function of a motion for summary judgment is to dispose of cases where there is no genuine issue as to material facts. [Rogers v. Girard Trust Co., C.C.A.6 \(Ohio\) 1947, 159 F.2d 239. Summary Judgment](#) 🗝️ 45(1)

The purpose of this rule regarding summary judgment is to dispose of cases where there is no genuine issue of fact, even though an issue may be raised formally by the pleading. [Battista v. Horton, Myers & Raymond, App.D.C.1942, 128 F.2d 29, 76 U.S.App.D.C. 1](#). See, also, [Koepke v. Fontecchio, C.A.Cal.1949, 177 F.2d 125; Miller v. Miller, 1941, 122 F.2d 209, 74 App.D.C. 216; Fletcher v. Krise, 1941, 120 F.2d 809, 73 App.D.C. 266, certiorari denied 62 S.Ct. 88, 314 U.S. 608, 86 L.Ed. 489; Ortiz v. National Liberty Ins. Co. of America, D.C.Puerto Rico 1948, 75 F.Supp. 550; Michigan Millers Mut. Fire Ins. Co. v. Canadian Northern Ry. Co., D.C.Minn.1944, 58 F.Supp. 326, affirmed 152 F.2d 292. Summary Judgment](#) 🗝️ 2

One of the principal purposes of summary judgment rule is to isolate and dispose of factually unsupported claims and defenses. [Shivers v. Honeywell, Inc., N.D.Ill.1996, 933 F.Supp. 705. Summary Judgment](#) 🗝️ 2

Very purpose of summary judgment motion is to assess whether trial is necessary. [Kirkland v. U.S., D.Colo.1996, 930 F.Supp. 1443. Summary Judgment](#) 🗝️ 2

More than disfavored procedural shortcut, summary judgment is important procedure designed to secure the just, speedy, and inexpensive determination of every action. [Tenbrink v. Federal Home Loan Bank, D.Kan.1996, 920 F.Supp. 1156. Summary Judgment](#) 🗝️ 3

One principal purpose of summary judgment rule is to isolate and dispose of factually unsupported claims or defenses, and rule should be interpreted in way that allows it to accomplish this purpose. [Taylor v. Dover Elevator Systems, Inc., N.D.Miss.1996, 917 F.Supp. 455. Summary Judgment](#) 🗝️ 2

Motion for summary judgment is integral part of Federal Rules of Civil Procedure and facilitates overall purpose of Rules, namely, to secure just, speedy and inexpensive determination of every action. [Rivkin v. Coleman, S.D.N.Y.1996, 914 F.Supp. 76. Summary Judgment](#) 🗝️ 3

One principal purpose of summary judgment rule is to isolate and dispose of factually unsupported claims and defenses. [Pollard v. Azcon Corp., N.D.Ill.1995, 904 F.Supp. 762. Summary Judgment](#) 🗝️ 2

One of the principal purposes of summary judgment rule is to isolate and dispose of factually unsupported claims; thus, rule allows court, in furtherance of policy of "securing the just, speedy and inexpensive determination" of civil actions, to conduct a sort of trial on the paper record, and to exercise some discretion in determining whether a claim or defense is plausible. [Javetz v. Board of Control, Grand Valley State University, W.D.Mich.1995, 903 F.Supp. 1181, motion to amend denied. Summary Judgment](#) 🗝️ 2; [Summary Judgment](#) 🗝️ 72

Purpose of summary judgment is to avoid pointless trail in cases where it is unnecessary and would only cause delay and expense. [Morgan v. Havir Mfg. Co., E.D.Pa.1994, 887 F.Supp. 759, reconsideration denied 1995 WL 20817. Summary Judgment](#) 🗝️ 2

One of principal purposes of rule governing summary judgment is to isolate and dispose of factually unsupported claims. [Deaver v. Texas Commerce Bank, N.A., E.D.Tex.1995, 886 F.Supp. 578](#), affirmed 79 F.3d 1143. [Summary Judgment](#) 🏹 2

Role of summary judgment is to pierce formal pleadings and evaluate proof to determine whether there is genuine need for trial. [Zolotarevsky v. General Elec. Co., D.Mass.1994, 862 F.Supp. 659](#). [Summary Judgment](#) 🏹 2

One of the principal purposes of summary judgment rule is to dispose of factually unsupported claims or defenses. [Goomar v. Centennial Life Ins. Co., S.D.Cal.1994, 855 F.Supp. 319](#), affirmed 76 F.3d 1059. [Summary Judgment](#) 🏹 2

Summary judgment procedure is designed to secure just, speedy, and inexpensive determination of any action. [Brophy v. Cincinnati, New Orleans, & Texas Pacific Ry. Co., S.D.Ohio 1994, 855 F.Supp. 213](#). [Summary Judgment](#) 🏹 1

One purpose of summary judgment rule is to require plaintiff, in advance of trial and after motion for summary judgment has been filed and supported, to come forward with some minimal facts to show that defendant may be liable under claims alleged. [Hayes v. Hambruch, D.Md.1994, 841 F.Supp. 706](#), affirmed 64 F.3d 657. [Summary Judgment](#) 🏹 2

Summary judgment is not properly viewed as device that trial court may, in its discretion, implement in lieu of trial on merits; instead, Rules of Civil Procedure mandate entry of summary judgment against party who fails to make showing sufficient to establish existence of every element essential to that party's case on which that party will bear burden of proof at trial. [Berkner v. Bell Helmets, Inc., N.D.Ga.1993, 822 F.Supp. 721](#), affirmed 9 F.3d 121. [Summary Judgment](#) 🏹 1; [Summary Judgment](#) 🏹 80

Purpose of summary judgment is to avoid useless trials by isolating and disposing of factually unsupported claims or defenses. [Foucher v. First Vermont Bank & Trust Co., D.Vt.1993, 821 F.Supp. 916](#). [Summary Judgment](#) 🏹 2

Purpose of summary judgment is to avoid unnecessary trials when there is no dispute as to the facts before the court. [Alam v. Reno Hilton Corp., D.Nev.1993, 819 F.Supp. 905](#). [Summary Judgment](#) 🏹 2

---- Determination of existence of disputed facts, purpose

Purpose of summary judgment is not to explore all factual ramifications of case, but to determine whether such exploration is necessary. [Briggs v. Kerrigan, C.A.1 \(Mass.\) 1970, 431 F.2d 967](#). [Summary Judgment](#) 🏹 2

Motion for summary judgment is not trial of fact issues but is for purpose of determining whether, in fact, there are any genuine issues as to material facts, and if it clearly appears on such motion that, even though there is an issue under pleadings, there is in fact no dispute as to controlling material facts, court should enter summary judgment. [Neff v. World Pub. Co., C.A.8 \(Neb.\) 1965, 349 F.2d 235](#). See, also, [Schwartz v. U.S., D.C.N.D.1965, 38 F.R.D. 164](#). [Summary Judgment](#) 🏹 2; [Summary Judgment](#) 🏹 43

The function of motion for summary judgment is not to permit court to decide issues of fact but solely to determine whether there is issue of fact to be tried. [Aetna Ins. Co. v. Cooper Wells & Co., C.A.6 \(Mich.\) 1956, 234 F.2d 342](#). See, also, [Byrnes v. Mutual Life Ins. Co. of N.Y., C.A.Ariz.1955, 217 F.2d 497](#), certiorari denied 75 S.Ct. 532, 348 U.S. 971, 99 L.Ed. 756; [Pipe Fitters' Local No. 392 Pension Plan v. Hudle, D.C.Ohio 1982, 549 F.Supp. 359](#); [Hershman v. Sierra Pacific Power Co., D.C.Nev.1977, 434 F.Supp. 46](#); [Thompson v. Merrill Lynch, Pierce, Fenner & Smith, Inc., D.C.Okla.1975, 401 F.Supp. 111](#); [MFA Mut. Inc. Co. v. Clark, D.C.Tenn.1978, 79 F.R.D. 227](#); [Mayle v. City of New Castle, D.C.Pa.1976, 71 F.R.D. 674](#). [Summary Judgment](#) 🏹 72

The purpose of this rule, authorizing a summary judgment, is to enable district court to enter summary judgment when pleadings, and affidavits that may have been filed with the pleadings, clearly show that there is no issue of fact to be tried. [Campana Corp. v. Harrison, C.C.A.7 \(Ill.\) 1943, 135 F.2d 334](#). See, also, [Sexton v. American News Co., D.C.Fla.1955, 133 F.Supp. 591](#); [Bowles v. Batson, D.C.S.C.1945, 61 F.Supp. 839](#), affirmed 154 F.2d 566. [Summary Judgment](#) 🏹 2

Purpose of summary judgment motion is to enable party who believes there is no genuine dispute as to specific fact essential to nonmoving party's case to demand at least one sworn averment of that fact before lengthy process of litigation continues. [Schenck v. Edwards, E.D.Wash.1996, 921 F.Supp. 679, affirmed 133 F.3d 929. Summary Judgment 2](#)

Inquiry to be made on motion for summary judgment is whether evidence presents a sufficient disagreement to require submission to a jury or whether evidence is so one-sided that one party must prevail as a matter of law. [Bruns v. Northwestern Steel & Wire Co., N.D.Ill.1994, 869 F.Supp. 583. Summary Judgment 93](#)

Purpose of summary judgment is to explore available evidence to determine whether there is genuine issue of material fact requiring trial. [Telfair v. Gilberg, S.D.Ga.1994, 868 F.Supp. 1396, affirmed 87 F.3d 1330. Summary Judgment 2](#)

Inquiry on motion for summary judgment is whether evidence presented sufficient disagreement to require submission to a jury or whether it is so one sided that one party must prevail as matter of law. [Riedel v. Acutote of Colorado, S.D.Ohio 1991, 773 F.Supp. 1055, appeal dismissed 947 F.2d 945. See, also, Sparks v. Goodyear Atomic Corp., S.D.Ohio 1991, 773 F.Supp. 1043. Summary Judgment 64; Summary Judgment 93](#)

To defeat motion for summary judgment, opposing party must produce substantial evidence of genuine dispute as to material fact. [In re Curran, Bkrtcy.D.Mass.1995, 183 B.R. 9. Summary Judgment 86](#)

---- Elimination of frivolous or useless actions, purpose

Purpose of summary judgment motion is not to preserve legal arguments for appeal; rather, it is to eliminate useless trials on undisputed issues of fact. [Flynn v. Sandahl, C.A.7 \(Ill.\) 1995, 58 F.3d 283. Summary Judgment 2](#)

Properly employed, summary judgment is a useful device for unmasking frivolous claims and putting a swift end to meritless litigation. [Quinn v. Syracuse Model Neighborhood Corp., C.A.2 \(N.Y.\) 1980, 613 F.2d 438. Summary Judgment 2](#)

Summary judgment is a useful tool whereby needless trials may be avoided and should be withheld in an appropriate case. [U. S. v. Porter, C.A.8 \(Mo.\) 1978, 581 F.2d 698. Summary Judgment 2](#)

Although summary judgment is an extreme remedy, not to be employed unless the movant has established his right to a judgment with such clarity as to leave no room for controversy and to demonstrate that the opposing party is not entitled to recover under any discernible circumstances, court should recognize its salutary purpose in avoiding a useless, expensive, and time-consuming trial where there is no genuine, material issue to be tried. [Lyons v. Board of Ed. of Charleston Reorganized School Dist. No. 1 of Mississippi County, Missouri, C.A.8 \(Mo.\) 1975, 523 F.2d 340. Summary Judgment 45\(1\)](#)

Primary purpose of a motion for summary judgment is to avoid a useless trial, and summary judgment is a procedural device for promptly disposing of actions in which there is no genuine issue of any material fact even though such issue might have been raised by formal pleadings. [Mintz v. Mathers Fund, Inc., C.A.7 \(Ill.\) 1972, 463 F.2d 495. Summary Judgment 2; Summary Judgment 45\(1\)](#)

That recent decisions in Court of Appeals for District of Columbia circuit and in Supreme Court have served to eliminate artificial barrier created by concept of standing does not mean that traditional legitimate bars to frivolous lawsuits have also been abrogated; summary judgment procedure will serve admirably to eliminate frivolous lawsuits which might occasionally arise. [Blackhawk Heating & Plumbing Co. v. Driver, C.A.D.C.1970, 433 F.2d 1137, 140 U.S.App.D.C. 31. Federal Civil Procedure 103.2; Summary Judgment 1](#)

Chief among functions of summary judgment are those of avoiding long and expensive litigation productive of nothing and curbing danger that threat of such litigation will be used to harass or to coerce settlement. [Washington Post Co. v. Keogh, C.A.D.C.1966, 365 F.2d 965, 125 U.S.App.D.C. 32, certiorari denied 87 S.Ct. 708, 385 U.S. 1011, 17 L.Ed.2d 548. Summary Judgment 2](#)

Function of summary judgment is to avoid useless trial, and it is to be cautiously granted. *Old Grantian Co. v. William Grant & Sons Ltd.*, Cust. & Pat.App.1966, 361 F.2d 1018, 53 C.C.P.A. 1257, 150 U.S.P.Q. 58. See, also, *Perma Research & Development Co. v. Singer Co.*, C.A.N.Y.1969, 410 F.2d 572; *U.S. Steel Corp. v. Vasco Metals Corp.*, 1968, 394 F.2d 1009, 55 C.C.P.A. 1141; *Cox v. American Fidelity & Cas. Co.*, C.A.Or.1957, 249 F.2d 616; *Carotzas v. Iowa Mut. Ins. Co.*, C.A.5, 1956, 235 F.2d 193; *Sartor v. Arkansas Natural Gas Corporation*, C.C.A.La.1943, 134 F.2d 433, reversed on other grounds 64 S.Ct. 774, 321 U.S. 620, 88 L.Ed. 967, rehearing denied 64 S.Ct. 941, 322 U.S. 767, 88 L.Ed. 1593; *Chandler v. O'Bryan*, D.C.Okl.1969, 311 F.Supp. 1121, reversed on other grounds 445 F.2d 1045, certiorari denied 92 S.Ct. 1176, 405 U.S. 964, 31 L.Ed.2d 241, rehearing denied 92 S.Ct. 1310, 405 U.S. 1049, 31 L.Ed.2d 592; *Hooker v. New York Life Ins. Co.*, N.D.Ill.1946, 66 F.Supp. 313, reversed on other grounds 161 F.2d 852, certiorari denied 68 S.Ct. 109, 332 U.S. 809, 92 L.Ed. 386, rehearing denied 68 S.Ct. 164, 332 U.S. 826, 92 L.Ed. 401.

Summary Judgment 🗝️ 4

One of principal purposes of summary judgment rule is to isolate and dispose of factually unsupported claims; summary judgment is not disfavored procedural shortcut, but rather is principal tool by which factually insufficient claims or defenses can be isolated and prevented from going to trial with attendant unwarranted consumption of public and private resources. *U.S. ex rel. Milam v. Regents of University of California*, D.Md.1995, 912 F.Supp. 868. Summary Judgment 🗝️ 1; Summary Judgment 🗝️ 2

Principal purpose of summary judgment is to isolate and dispose of meritless litigation.

Silling v. Erwin, S.D.W.Va.1995, 881 F.Supp. 236. Summary Judgment 🗝️ 2

A principal purpose of summary judgment is to isolate and dispose of meritless litigation.

Sayre v. General Nutrition Corp., S.D.W.Va.1994, 867 F.Supp. 431, affirmed 67 F.3d 296.

Summary Judgment 🗝️ 2

Purpose of summary judgment is to avoid pointless trial in cases where it is unnecessary and would only cause delay and expense. *McGrath v. City of Philadelphia*, E.D.Pa.1994, 864 F.Supp. 466. Summary Judgment 🗝️ 2

Summary judgment rule is designed to eliminate unsubstantiated claims prior to trial. *Reed v. Aetna Cas. and Sur. Co., Inc.*, N.D.Ind.1995, 160 F.R.D. 572. Summary Judgment 🗝️ 2

Primary purpose of summary judgment is to avoid unnecessary trials in cases when no material factual issues are in dispute. *In re Allen, Bkrtcy.N.D.Ill.*1994, 183 B.R. 519.

Summary Judgment 🗝️ 2

Primary purpose of summary judgment is to avoid unnecessary trials when there is no genuine issue of material fact in dispute. *In re Henry, Bkrtcy.D.Vt.*1991, 135 B.R. 6.

Summary Judgment 🗝️ 2

---- Expedient determination of cases, purpose

Purpose of summary judgment rule is to expeditiously determine cases without necessity for formal trial where there is no substantial issue of fact. *Kern v. Tri-State Ins. Co.*, C.A.8 (Mo.) 1967, 386 F.2d 754. See, also, *Bland v. Norfolk & S.R. Co.*, C.A.N.C.1969, 406 F.2d 863; *Diplomat Elec., Inc. v. Westinghouse Elec. Supply Co., Division of Westinghouse Elec. Corp.*, C.A.Fla.1967, 378 F.2d 377; *Chambers v. U.S.*, C.A.Mo.1966, 357 F.2d 224; *Chambers & Co. v. Equitable Life Assur. Soc. of the U.S.*, C.A.Ga.1955, 224 F.2d 338; *Hollinghead v. Carter Oil Co.*, C.A.Miss.1955, 221 F.2d 920; *Creel v. Lone Star Defense Corp.*, C.A.Tex.1949, 171 F.2d 964, reversed on other grounds 70 S.Ct. 755, 339 U.S. 497, 94 L.Ed. 1017; *Parmlee v. Chicago Eye Shield Co.*, C.C.A.Mo.1946, 157 F.2d 582; *Harris Stanley Coal & Land Co. v. Chesapeake & O. Ry. Co.*, C.C.A.Ky.1946, 154 F.2d 450, certiorari denied 67 S.Ct. 111, 329 U.S. 761, 91 L.Ed. 656; *Sprague v. Vogt*, C.C.A.Minn.1945, 150 F.2d 795. Summary Judgment 🗝️ 2

Mission of summary judgment is to allow trial court to dispose of case in advance of hearing on merits, when pleadings, depositions, answers to interrogatories, and admissions, together with any supporting affidavits, reveal that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Jacobson v. Maryland Cas. Co.*, C.A.8 (Mo.) 1964, 336 F.2d 72, certiorari denied 85 S.Ct. 655, 379 U.S. 964, 13 L.Ed.2d 558. Summary Judgment 🗝️ 2

This rule providing for summary judgment outlines a salutary and efficient instrumentality for expedition of business in courts especially where merits of controversy have been fully explored in prior litigation between same parties. [Minnesota Min. & Mfg. Co. v. U. S. Rubber Co.](#), C.A.4 (N.C.) 1960, 279 F.2d 409, 125 U.S.P.Q. 480. Summary Judgment 🏹 1

Summary judgment procedure is properly regarded not as disfavored procedural shortcut, but rather as integral part of Federal Rules of Civil Procedure as whole, which are designed to secure just, speedy, and inexpensive determination of every action. [Reutzel v. Spartan Chemical Co.](#), N.D.Iowa 1995, 903 F.Supp. 1272. Summary Judgment 🏹 3

Although motion for summary judgment must be considered with due regard for right of parties asserting adequately supported claims and defenses to have those claims and defenses tried to jury, right to swift and inexpensive conclusion to claims and defenses lacking factual basis cannot be ignored. [Meyers v. Asics Corp.](#), S.D.N.Y.1994, 865 F.Supp. 177, 33 U.S.P.Q.2d 1145, affirmed 78 F.3d 605, 38 U.S.P.Q.2d 1604. Summary Judgment 🏹 50

Motion for summary judgment facilitates overall purpose of Federal Rules of Civil Procedure to secure just, speedy and inexpensive determination of every action. [Frutico S.A. de C.V. v. Bankers Trust Co.](#), S.D.N.Y.1993, 833 F.Supp. 288. Summary Judgment 🏹 2

Summary judgment procedure is properly regarded not as disfavored procedural shortcut, but rather as integral part of federal rules as a whole, which are designed to secure just, speedy and inexpensive determination of every action. [Butler v. Navistar Intern. Transp. Corp.](#), W.D.Va.1991, 809 F.Supp. 1202. Summary Judgment 🏹 3

---- Judicial economy, purpose

Basic purpose of summary judgment procedure is one of judicial economy, to save time and expense of a full trial when it is unnecessary because essential facts necessary to decision of issue can be adequately developed by less costly procedures with a net benefit to society. [Exxon Corp. v. National Foodline Corp.](#), Cust. & Pat.App.1978, 579 F.2d 1244, 198 U.S.P.Q. 407. Summary Judgment 🏹 2

Purpose of this rule is to avoid expenditure of judicial time and to avoid trial when the facts are not in dispute insofar as they are material to the lawsuit. [Klinge v. Lutheran Charities Ass'n of St. Louis](#), C.A.8 (Mo.) 1975, 523 F.2d 56. Summary Judgment 🏹 2

Summary judgment has, as one of its most important roles, the elimination of waste of time and researches of both litigants and courts in cases where trial would be a useless formality. [Zweig v. Hearst Corp.](#), C.A.9 (Cal.) 1975, 521 F.2d 1129, certiorari denied 96 S.Ct. 469, 423 U.S. 1025, 46 L.Ed.2d 399. Summary Judgment 🏹 2

Purpose of summary judgment is not to try issue of fact but to avoid trials where there is nothing to try. [Zimbauer v. Milwaukee Orthopaedic Group, Ltd.](#), E.D.Wis.1996, 920 F.Supp. 959. Summary Judgment 🏹 2

More than a disfavored procedural shortcut, summary judgment is an important procedure designed to secure just, speedy, and inexpensive determination of every action. [DP-Tek, Inc. v. AT & T Global Information Solutions Co.](#), D.Kan.1995, 891 F.Supp. 1510, affirmed 100 F.3d 828. Summary Judgment 🏹 3

If there is no genuine issue about any material fact, summary judgment is proper because it avoids needless and costly litigation and promotes judicial efficiency. [Miller v. Wackenhut Services, Inc.](#), W.D.Mo.1992, 808 F.Supp. 697. Summary Judgment 🏹 45(1)

Summary judgment motions can be tool of great utility in removing factually insubstantial cases from crowded dockets, freeing courts' trial time for those cases that really do raise genuine issues of material fact. [United Food and Commercial Workers Union Local No. 88, AFL-CIO, CLC v. Middendorf Meat Co.](#), E.D.Mo.1992, 794 F.Supp. 328, affirmed 991 F.2d 801. Summary Judgment 🏹 2

Purpose of summary judgment procedure is to eliminate trial in cases where trial is unnecessary and results in delay and expense, and, with ever-increasing burden upon judiciary, persuasive reasons exist for utilization of summary judgment procedures whenever possible; court therefore will not strain to find existence of genuine issue where

none exists. [Ford Motor Credit Co. v. Devalk Lincoln-Mercury, Inc., N.D.Ill.1985, 600 F.Supp. 1547. Summary Judgment](#) 🏠 2

Purpose of summary judgment is to avoid trial which is unnecessary and results in delay and expense, by promptly disposing of any actions in which there is no genuine issue of material fact. [In re Peller, Bkrtcy.D.N.J.1994, 184 B.R. 663. Summary Judgment](#) 🏠 2

---- Piercing of pleadings, purpose

Intent of subd. of this rule relating to form of supporting and opposing affidavits is to permit affidavits to pierce allegations in opponent's pleadings and to require him to come forward with counterproof in order to show genuine issues of fact, although there is an exception where evidentiary matter in support of motion does not establish absence of genuine issue of fact. [Keller v. Dravo Corp., C.A.5 \(La.\) 1971, 441 F.2d 1239, certiorari denied 92 S.Ct. 679, 404 U.S. 1017, 30 L.Ed.2d 665. Summary Judgment](#) 🏠 313(2)

The federal summary judgment proceeding is the most extensive of any jurisdiction, in that it is equally available to plaintiffs and defendant, and in all forms and kinds of civil actions, and it is intended to permit a party to pierce the allegations of fact in the pleadings and to obtain relief by summary judgment where facts set forth in detail in affidavits, depositions, and admissions on file show that there are no genuine issues of fact to be tried. [Engl v. Aetna Life Ins. Co., C.C.A.2 \(N.Y.\) 1943, 139 F.2d 469. See, also, Christianson v. Gaines, 1949, 174 F.2d 534, 85 U.S.App.D.C. 15; Avrick v. Rockmont Envelope Co., C.A.Colo.1946, 155 F.2d 568; Schreffler v. Bowles, C.C.A.Colo.1946, 153 F.2d 1, certiorari denied 66 S.Ct. 1366, 328 U.S. 870, 90 L.Ed. 1640; Madeirense Do Brasil S/A v. Stulman-Emrick Lumber Co., C.C.A.N.Y.1945, 147 F.2d 399, certiorari denied 65 S.Ct. 1201, 325 U.S. 861, 89 L.Ed. 1982; Lauchert v. American S.S. Co., D.C.N.Y.1946, 65 F.Supp. 703; U.S. ex rel. Ryan v. Broderick, D.C.Kan.1945, 59 F.Supp. 189; Finlay v. Union Pac. R. Co., D.C.Kan.1946, 6 F.R.D. 284. Summary Judgment](#) 🏠 1; [Summary Judgment](#) 🏠 45(1); [Summary Judgment](#) 🏠 301

Role of summary judgment among the array of pretrial devices is to pierce the boilerplate of the pleadings and assay parties' proof in order to determine whether trial is actually required. [Tucker v. Kingsbury Corp., D.N.H.1996, 929 F.Supp. 50. Summary Judgment](#) 🏠 2

Role of summary judgment, among array of pretrial devices, is to pierce boilerplate of pleadings and assay parties' proof in order to determine whether trial is actually required. [Taylor v. Litteer, D.N.H.1996, 925 F.Supp. 898, reconsideration denied 930 F.Supp. 691. Summary Judgment](#) 🏠 2

Role of summary judgment in civil litigation is to pierce boilerplate of pleadings and assay parties' proof in effort to determine whether trial is actually required. [Gallagher v. Park West Bank and Trust Co., D.Mass.1996, 921 F.Supp. 867. Summary Judgment](#) 🏠 2

Mission of the summary judgment procedure is to pierce the pleadings and to assess the proof in order to see whether there is genuine need for trial. [Massey v. Scrivner, Inc., W.D.Okla.1994, 901 F.Supp. 1546, affirmed 53 F.3d 1118. Summary Judgment](#) 🏠 2

Purpose of summary judgment is to pierce pleadings and to assess proof to see whether there is genuine need for trial. [Borschow Hosp. & Medical Supplies, Inc. v. Cesar Castillo, Inc., D.Puerto Rico 1995, 882 F.Supp. 236, affirmed 96 F.3d 10. Summary Judgment](#) 🏠 2

---- Preservation of speculative issues, purpose

It is not intent of this rule pertaining to summary judgment to preserve purely speculative issues of fact for trial. [Exxon Corp. v. F. T. C., C.A.D.C.1980, 663 F.2d 120, 213 U.S.App.D.C. 356. Summary Judgment](#) 🏠 95

Although this rule requires that established facts be viewed in light most favorable to nonmoving party, this rule is not intended to preserve purely speculative issues of fact for trial. [Solargen Elec. Motor Car Corp. v. American Motors Corp., S.D.N.Y.1981, 530 F.Supp. 22, affirmed 697 F.2d 297, certiorari denied 103 S.Ct. 217, 459 U.S. 910, 74 L.Ed.2d 172. Summary Judgment](#) 🏠 75

---- Separation of pretended and real issues, purpose

Object of summary judgment is to separate real and genuine issues from those that are formal or pretended so that only the former may subject the moving party to the burden of

trial. [Radobenko v. Automated Equipment Corp., C.A.9 \(Ariz.\) 1975, 520 F.2d 540.](#)

[Summary Judgment](#) 📄 2

This rule relating to summary judgments is clearly intended to be used to pierce the allegations of the pleadings and allow the trial court to dispose of a case in advance of a hearing on the merits when the pleadings, depositions, answers to interrogatories, admissions and affidavits show that there is no genuine issue as to any material fact; the objective is to separate the sham and insubstantial from the real and genuine issues of fact. [Bryant v. Com. of Ky., C.A.6 \(Ky.\) 1974, 490 F.2d 1273.](#) [Summary Judgment](#) 📄 45(1)

Purpose of provisions of this rule that an adverse party may not rest upon mere allegations of his pleadings but must set forth specific facts showing that there is a genuine issue for trial was to strengthen weapon of summary judgment as a device to screen out sham issues of fact. [National Life Ins. Co. v. Silverman, C.A.D.C.1971, 454 F.2d 899, 147 U.S.App.D.C. 56.](#) [Summary Judgment](#) 📄 77

Purpose of this rule, requiring adverse party to motion for summary judgment to set forth specific facts showing that there is genuine issue for trial is to strengthen use of summary judgment as means to eliminate sham issues of fact and to avoid otherwise lengthy trials. [U. S. v. Gossett, C.A.9 \(Cal.\) 1969, 416 F.2d 565,](#) certiorari denied [90 S.Ct. 992, 397 U.S. 961, 25 L.Ed.2d 253.](#) [Summary Judgment](#) 📄 2

The purpose of the amendment of this rule requiring party opposing summary judgment to set forth specific facts showing that there is a genuine issue for trial was to strengthen the weapon of summary judgment as a device to screen out sham issues of fact. [U.S. v. Prince, C.A.2 \(N.Y.\) 1965, 348 F.2d 746.](#) See, also, [Castlegate, Inc. v. National Tea Co., D.C.Colo.1963, 34 F.R.D. 221.](#) [Summary Judgment](#) 📄 282

Object of motion for summary judgment is to separate formal from substantial issues raised by the pleadings. [Doza v. American Nat. Ins. Co., C.A.8 \(Mo.\) 1963, 314 F.2d 230.](#) [Summary Judgment](#) 📄 2

The object of a motion for summary judgment is to separate what is formal or pretended in denial or averment from what is genuine and substantial, so that only the latter may subject a suitor to burden of trial. [Reed Research, Inc. v. Schumer Co., C.A.D.C.1957, 243 F.2d 602, 100 U.S.App.D.C. 179.](#) [Summary Judgment](#) 📄 2

Purpose of this rule is to separate real and genuine issues from mere formal or pretended issues. [Suckow Borax Mines Consol. v. Borax Consol., C.A.9 \(Cal.\) 1950, 185 F.2d 196,](#) certiorari denied [71 S.Ct. 506, 340 U.S. 943, 95 L.Ed. 680,](#) rehearing denied [71 S.Ct. 620, 341 U.S. 912, 95 L.Ed. 1349.](#) [Summary Judgment](#) 📄 2

One of principal purposes of summary judgment rule is to isolate and dispose of factually unsupported claims or defenses, and rule should be interpreted in way that allows it to accomplish that purpose. [A.S.I., Inc. v. Sanders, D.Kan.1993, 835 F.Supp. 1349.](#) [Summary Judgment](#) 📄 2

Objective of this rule is to separate the sham and insubstantial from real and genuine issues by allowing trial court to pierce allegations of pleadings and dispose of case in advance of hearing on the merits when no genuine issues of fact exist. [Pearson v. Easy Living, Inc., S.D.Ohio 1981, 534 F.Supp. 884.](#) [Summary Judgment](#) 📄 2

Summary judgment is not designed to weed out dubious claims, but only those with no basis in material fact. [Weight Watchers of Quebec Ltd. v. Weight Watchers Intern., Inc., E.D.N.Y.1975, 398 F.Supp. 1047, 188 U.S.P.Q. 16.](#) [Summary Judgment](#) 📄 54

---- Smoking out of facts, purpose

Summary judgment motion is intended to smoke out facts so that judge can decide if anything remains to be tried. [Donnelly v. Guion, C.A.2 \(Conn.\) 1972, 467 F.2d 290.](#) [Summary Judgment](#) 📄 2

While a day in court may be a constitutional necessity when there are disputed questions of fact, the function of motion for summary judgment is to smoke out if there is any case, i.e., any genuine dispute as to any material fact, and, if there is no case, to conserve judicial time and energy by avoiding unnecessary trial and by providing speedy and efficient

summary disposition. [Bland v. Norfolk & S. R. Co., C.A.4 \(N.C.\) 1969, 406 F.2d 863.](#)
[Summary Judgment](#) 2; [Summary Judgment](#) 45(1)

Purpose of invoking summary judgment procedure is to “smoke out” evidence outside the record. [Business Equipment Center, Ltd. v. DeJur-Amsco, Corp., D.C.D.C.1978, 465 F.Supp. 775.](#) [Summary Judgment](#) 2

--- Substitute for trial, purpose

Summary judgment is authorized only where moving party is entitled to judgment as a matter of law, where it is clear what the truth is, and where no general issue remains for trial; purpose of the rule is not to cut litigants off from their right of trial by jury if they have issues to try. [Poller v. Columbia Broadcasting System, Inc., U.S.Dist.Col.1962, 82 S.Ct. 486, 368 U.S. 464, 7 L.Ed.2d 458.](#) See, also, [Washington v. Cameron, 1969, 411 F.2d 705, 133 U.S.App.D.C. 391; National Screen Service Corp. v. Poster Exchange, Inc., C.A.Ga.1962, 305 F.2d 647; Fresh Grown Preserve Corporation v. U.S., C.C.A.Ohio 1944, 143 F.2d 191.](#) [Summary Judgment](#) 2; [Summary Judgment](#) 45(2)

Summary judgment is not to be used as a substitute for trial but only when it is quite clear what the truth is and that no genuine issue of fact remains for trial. [In re Coordinated Pretrial Proceedings in Antibiotic Antitrust Actions, C.A.8 \(Minn.\) 1976, 538 F.2d 180, 190 U.S.P.Q. 273, certiorari denied 97 S.Ct. 738, 429 U.S. 1040, 50 L.Ed.2d 751, 192 U.S.P.Q. 543.](#) [Summary Judgment](#) 2; [Summary Judgment](#) 45(1)

Summary judgment does not serve as a substitute for trial. [Redhouse v. Quality Ford Sales, Inc., C.A.10 \(Utah\) 1975, 511 F.2d 230, on rehearing 523 F.2d 1.](#)

Summary judgment is not substitute for trial, and its very purpose is to eliminate those trials in which no issues of material fact exist. [Jones v. Nelson, C.A.10 \(Okla.\) 1973, 484 F.2d 1165.](#) [Summary Judgment](#) 2

Under summary judgment rule no margin exists for disposition of factual issues, and rule does not serve as substitute for trial of case nor require parties to dispose of litigation through use of affidavits. [Machinery Center, Inc. v. Anchor Nat. Life Ins. Co., C.A.10 \(Utah\) 1970, 434 F.2d 1.](#) See, also, [Harman v. Diversified Medical Investments Corp., C.A.Okla.1973, 488 F.2d 111; Ando v. Great Western Sugar Co., C.A.Wyo.1973, 475 F.2d 531; Bushman Const. Co. v. Conner, C.A.Colo.1962, 307 F.2d 888.](#) [Summary Judgment](#) 2

Under this rule providing that a motion for summary judgment shall be granted only when the pleadings, depositions and admissions on file, together with affidavits, show that there is no genuine issue as to any material fact and that moving party is entitled to a judgment as a matter of law, bona fide factual disputes may not be disposed of through the use of affidavits, and the rule cannot be used as a substitute for a trial of the case. [Hanley v. Chrysler Motors Corp., C.A.10 \(N.M.\) 1970, 433 F.2d 708.](#) [Summary Judgment](#) 310

It is not purpose of this rule relating to summary judgment to deny to litigants right of trial if they really have issues to try. [U.S. v. Burket, C.A.5 \(Fla.\) 1968, 402 F.2d 426.](#) See, also, [National Life Insurance Co. v. Silverman, 1971, 454 F.2d 899, 147 U.S.App.D.C. 56; Gross v. Southern Ry. Co., C.A.Ga.1969, 414 F.2d 292; Melton v. Greyhound Corp., C.A.Tex.1965, 354 F.2d 970; Rogers v. Peabody Coal Co., C.A.Ky.1965, 342 F.2d 749; Edwards v. Mazor Masterpieces, Inc., 1961, 295 F.2d 547, 111 U.S.App.D.C. 202; Huff v. Louisville & N.R. Co., C.A.La.1952, 198 F.2d 347; Chappell v. Goltsman, C.A.Ala.1950, 186 F.2d 215; Stevens v. Howard D. Johnson Co., C.A.Va.1950, 181 F.2d 390; Preston v. Aetna Life Ins. Co., C.A.Ill.1949, 174 F.2d 10, certiorari denied 70 S.Ct. 80, 338 U.S. 829, 94 L.Ed. 504; Raubal v. Engelhard Minerals & Chemicals Corp., D.C.N.Y.1973, 364 F.Supp. 1352; Dawn v. Sterling Drug, Inc., D.C.Cal.1970, 319 F.Supp. 358.](#) [Summary Judgment](#) 2

Under this rule dealing with summary judgment, no margin exists for disposition of factual issues, and summary judgment procedure does not serve as substitute for trial of case. [Frey v. Frankel, C.A.10 \(Kan.\) 1966, 361 F.2d 437.](#) [Summary Judgment](#) 2; [Summary Judgment](#) 43

Summary judgment should not be used as a substitute for trial on facts and law, especially where parties are entitled to trial by jury, and mere fact that trial judge believes that plaintiff cannot win lawsuit before a jury does not endow him with authority to take place of jury and

decide hotly contested issues of fact. [Cox v. English-American Underwriters, C.A.9 \(Cal.\) 1957, 245 F.2d 330. Summary Judgment](#) 🔑 1

Summary judgment procedure does not seek to cut litigants off from their right to jury trial, but seeks to determine what if any issues of fact are present for a jury to try and to enable court to expeditiously dispose of cases by giving judgment on the law where material facts are not in dispute. [Carantzas v. Iowa Mutual Insurance Company, C.A.5 1956, 235 F.2d 193](#). See, also, [Chappell v. Goltsman, C.A. Ala. 1950, 186 F.2d 215](#); [Hagerman v. U.S., D.C. Wyo. 1960, 180 F.Supp. 181](#); [McKinzie v. Huckaby, D.C. Okl. 1953, 112 F.Supp. 642](#); [Spur Bottling Co. v. Canada Dry Ginger Ale, D.C. Ark. 1951, 98 F.Supp. 972](#); [Walsh v. Chicago Bridge & Iron Co., D.C. Ill. 1950, 90 F.Supp. 322](#); [Luria Steel & Trading Corp. v. Ford, D.C. Neb. 1949, 9 F.R.D. 479, affirmed 192 F.2d 880. Summary Judgment](#) 🔑 2

The summary judgment procedure is valuable for striking through sham claims and defenses which stand in the way of a direct approach to the truth, but was not intended to and cannot deprive a litigant of right to a jury trial. [Whitaker v. Coleman, C.C.A. 5 \(Ala.\) 1940, 115 F.2d 305. Summary Judgment](#) 🔑 50

One purpose of summary judgment rule is to require a party, in advance of trial and after motion for summary judgment has been filed and supported, to come forth with some minimal facts to show that it may not be liable under claims alleged or subject to defenses asserted; absent minimal showing, party moving for summary judgment should not be required to undergo expense of preparing for and participating in trial of issue challenged. [Davis v. U.S., D. Md. 1993, 841 F.Supp. 696, affirmed 46 F.3d 1123. Summary Judgment](#) 🔑 2

Purpose of summary judgment is not to cut off litigants' right to trial by jury if they really have genuine factual issues to try and it is appropriate only where documents tendered to court disclose that no genuine issue of material fact remains to be decided and court may not decide disputed issues of fact in considering such a motion. [Milwee v. Peachtree Cypress Inv. Co., E.D. Tenn. 1977, 510 F.Supp. 279. Summary Judgment](#) 🔑 2

This rule allowing for summary judgment is not intended to substitute trial by affidavit for the give and take of trial in open court. [Eastern Tunneling Corp. v. Southgate Sanitation Dist., Arapahoe County, Colo., D.C. Colo. 1979, 487 F.Supp. 109. Summary Judgment](#) 🔑 1

Policy

There is a strong policy against the granting of summary judgment. [Sobel v. Yeshiva University, S.D.N.Y. 1979, 477 F.Supp. 1161. Summary Judgment](#) 🔑 1

Policy of summary judgment procedure is to dispose of factually unsupported claims or defenses, to serve judicial economy, and to avoid unnecessary litigation. [In re Eisenberg, Bkrcty. E.D. Wis. 1995, 189 B.R. 725. Bankruptcy](#) 🔑 2164.1; [Summary Judgment](#) 🔑 2

Law governing--Generally

Court of Appeals for the Federal Circuit looks to regional circuit procedural law for precedential guidance concerning summary judgment discovery practice. [Serdarevic v. Advanced Medical Optics, Inc., C.A. Fed. \(N.Y.\) 2008, 532 F.3d 1352, 87 U.S.P.Q.2d 1481, rehearing en banc denied. Courts](#) 🔑 96(7)

[Federal Civil Rule 56](#), and not Georgia "contrary expert opinion" rule, should have been applied to determine whether medical malpractice plaintiff was bound to respond to physicians' motions for summary judgment, which stated simply that in their expert opinions neither of them was guilty of malpractice. [Reinke v. O'Connell, C.A. 11 \(Ga.\) 1986, 790 F.2d 850, rehearing denied 797 F.2d 982. Federal Courts](#) 🔑 3045(5)

Summary judgment practice in federal district courts is controlled by this rule, unaffected by state procedural rules. [Schultz v. Newsweek, Inc., C.A. 6 \(Mich.\) 1982, 668 F.2d 911. Federal Courts](#) 🔑 3045(5)

In diversity case, standards for deciding whether summary judgment was appropriate was matter of federal law. [Fitzsimmons v. Best, C.A. 7 \(Ill.\) 1976, 528 F.2d 692. Federal Courts](#) 🔑 3045(5)

In federal proceedings on motions for summary judgment, questions of state law will arise in determining materiality of particular facts to claims and defenses of parties and factual

elements required to establish claims or defenses of moving party, but whether trial is necessary is matter of federal law. [Lighting Fixture & Elec. Supply Co. v. Continental Ins. Co., C.A.5 \(Fla.\) 1969, 420 F.2d 1211. Federal Courts](#) 📌 3045(5)

When a retaliatory discharge case governed by Illinois law is litigated in a federal court, the federal court must apply the standard of the state law to a motion for summary judgment, and not the federal standard. [Goode v. American Airlines, Inc., N.D.Ill.2010, 741 F.Supp.2d 877, reconsideration denied. Federal Courts](#) 📌 3045(5)

A federal court in a diversity action applies the standards of federal summary judgment rule, not state's summary judgment standard. [Masterson v. Meade County Fiscal Court, W.D.Ky.2007, 489 F.Supp.2d 740. Federal Courts](#) 📌 3045(5)

Even though Kentucky state law was applicable to motorists' vicarious liability claim against out-of-state employer of truck driver who rear-ended motorists, District Court would apply federal summary judgment standards, not Kentucky's summary judgment standard. [McGonigle v. Whitehawk, W.D.Ky.2007, 481 F.Supp.2d 835. Federal Courts](#) 📌 3045(5); [Federal Courts](#) 📌 3067(2)

Patient and his father as plaintiffs, and psychiatrist as defendant, by assuming in their briefs on psychiatrist's motion for summary judgment that New York law applied in the diversity action asserting medical malpractice, fraud, and unjust enrichment, impliedly consented to application of New York law, thereby validly establishing the law to be applied by the district court. [Carofino v. Forester, S.D.N.Y.2006, 450 F.Supp.2d 257. Fraud](#) 📌 1.5; [Health](#) 📌 608; Unjust Enrichment And Constructive [Contracts](#) 📌 3; Unjust Enrichment And Constructive [Contracts](#) 📌 114

Federal Rules of Civil Procedure, not rule of Texas Rules of Civil Procedure, governed propriety of summary judgment in diversity case in federal court. [Royal Surplus Lines Ins. Co. v. Brownsville Independent School Dist., S.D.Tex.2005, 404 F.Supp.2d 942. Federal Courts](#) 📌 3045(5)

Because federal law controls procedural aspects of diversity case, grant of summary judgment is controlled by federal summary judgment rule as interpreted by federal courts. [Richardson v. Matthews, D.Mass.1995, 882 F.Supp. 6. Federal Courts](#) 📌 3045(5)

Ultimate question of whether standard for summary judgment was met was to be determined by court on basis of federal law in diversity action arising from collision even though law of Florida required that facts be viewed most favorably for party opposing summary judgment. [Eberhardy v. General Motors Corp., M.D.Fla.1975, 404 F.Supp. 826. Federal Courts](#) 📌 3045(5)

In action to recover on an amended money judgment rendered by Wisconsin circuit court against defendant's named insured, an accounting partnership formed by two individuals, Minnesota law was governing for the purpose of considering plaintiff's summary judgment motion, since, under a grouping-of-contacts approach, the record revealed that the principal location of the insured risk was in Minnesota, that the place of contracting was in Minnesota, and that the principal place of business for both the insured and the insurer was in Minnesota. [Capitol Indem. Corp. v. St. Paul Fire & Marine Ins. Co., W.D.Wis.1972, 357 F.Supp. 399. Insurance](#) 📌 1087

---- Admissibility of evidence, law governing

Federal procedural standards govern whether summary judgment is appropriate in any case and those standards include federal law as to the admissibility of evidence. [Utility Control Corp. v. Prince William Const. Co., Inc., C.A.4 \(Va.\) 1977, 558 F.2d 716. Summary Judgment](#) 📌 305

As interpreted by the federal courts, this rule determines what evidence a federal judge may consider on a summary judgment motion. [Northwestern Nat. Ins. Co. v. Corley, C.A.7 \(Ill.\) 1974, 503 F.2d 224. Summary Judgment](#) 📌 304

---- Appellate review, law governing

Upon review of summary judgment entered in diversity case, Court of Appeals was required to apply Louisiana law, attempting to rule as Louisiana court would if presented with same issues. [Mozeke v. International Paper Co., C.A.5 \(La.\) 1988, 856 F.2d 722. Federal Courts](#) 📌 3002

---- Conflict of law rules, law governing

On motion for summary judgment in diversity case on ground that plaintiff was not the real party in interest, conflicts of laws rules of the forum state would be applied to determine what state substantive law governed validity of assignment of claims to plaintiff. [American Optical Co. v. Curtiss](#), S.D.N.Y.1971, 56 F.R.D. 26, 173 U.S.P.Q. 654. [Federal Courts](#) 📌 3029(2)

---- Limitations, law governing

Where transactions complained of, insofar as defendant moving for summary judgment, in diversity action, on ground that action was barred by statute of limitations was concerned, occurred in New York, New York law governed question of statute of limitations. [Wood v. Wood](#), S.D.N.Y.1969, 312 F.Supp. 758. [Federal Courts](#) 📌 3034(2)

---- Maritime law, law governing

Maritime law of the United States applied to ship classification society's motion for summary judgment, in action by country of Spain against classification society for damages Spain allegedly sustained from an oil spill following the sinking of an oil tanker that had been classified by the society as fit to carry fuel cargo; although tanker sailed under a Bahamian flag and inspection of tanker by society occurred in China and the United Arab Emirates, society was headquartered in United States, surveys of the tanker were conducted in accordance with centrally promulgated rules from society's headquarters, at least one certificate operative at time of casualty was issued from society's headquarters, society allegedly received notice at its headquarters of tanker's poor condition, the location of the causality was tragic happenstance, and the defendant was neither the ship nor the shipowner. [Reino de Espana v. American Bureau of Shipping](#), S.D.N.Y.2010, 729 F.Supp.2d 635, affirmed on other grounds 691 F.3d 461. [Admiralty](#) 📌 1.15

---- Materiality of facts, law governing

Substantive law will identify which facts are material for purposes of summary judgment, as only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment; factual disputes that are irrelevant or unnecessary will not be counted. [Anderson v. Liberty Lobby, Inc.](#), U.S.Dist.Col.1986, 106 S.Ct. 2505, 477 U.S. 242, 91 L.Ed.2d 202, on remand. [Summary Judgment](#) 📌 47(2)

Substantive law governing claim or defense determines whether fact is "material fact" for summary judgment purposes. [BNSF Ry. Co. v. Albany & Eastern R.R. Co.](#), D.Or.2010, 741 F.Supp.2d 1184. [Summary Judgment](#) 📌 47(2)

Substantive law governing a claim or a defense determines whether a fact is material for summary judgment purposes. [Pinnell v. Belleque](#), D.Or.2009, 638 F.Supp.2d 1231. [Summary Judgment](#) 📌 47(2)

Substantive law determines which facts are material on a motion for summary judgment, and only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. [Sprint Communications Co., L.P. v. Western Innovations, Inc.](#), D.Ariz.2009, 618 F.Supp.2d 1101, reconsideration denied 618 F.Supp.2d 1121, on reconsideration in part 2009 WL 1458467, supplemented 618 F.Supp.2d 1124. [Summary Judgment](#) 📌 47(1); [Summary Judgment](#) 📌 47(2)

The substantive law governing a claim determines whether a fact is material, for summary judgment purposes. [Cleanmaster Industries, Inc. v. Sandra Shewry](#), C.D.Cal.2007, 491 F.Supp.2d 937. [Summary Judgment](#) 📌 47(2)

The substantive law governing a claim or a defense determines whether a fact is material for purposes of summary judgment. [Sharer v. Oregon](#), D.Or.2007, 481 F.Supp.2d 1156, adhered to on reconsideration 2007 WL 9718957. [Summary Judgment](#) 📌 47(2)

Under the federal law of summary judgment, state law determines which party bears the burden of proof and which facts are material for purposes of summary judgment; but, the federal district judge, under the applicable standards set forth in the Federal Rules of Civil Procedure for judgment as a matter of law, determines whether a genuine issue of material fact exists such that a reasonable jury could return a verdict for the nonmoving party. [Jackson v. Allstate Ins. Co.](#), E.D.Pa.2006, 441 F.Supp.2d 728. [Federal Courts](#) 📌 3045(5)

In deciding motion for summary judgment, substantive law governing dispute will determine which facts are material, and only disputes over facts that might affect outcome of suit

under governing law will properly preclude entry of summary judgment. [Oquendo v. Bettcher Industries, Inc.](#), D.N.J.1996, 939 F.Supp. 357, affirmed 118 F.3d 1577. [Summary Judgment](#) 🏠 47(2)

Substantive law governing dispute will determine which facts are material, and only dispute over those facts that might affect outcome of suit under governing law will properly preclude entry of summary judgment. [Alcman Services Corp. v. Samuel H. Bullock, P.C.](#), D.N.J.1996, 925 F.Supp. 252, affirmed 124 F.3d 185. [Summary Judgment](#) 🏠 47(2)

For summary judgment purposes, the substantive law governing the suit dictates which facts are material. [Wilkerson v. P.I.A. Topeka, Inc.](#), D.Kan.1995, 900 F.Supp. 1418. [Summary Judgment](#) 🏠 47(2)

Substantive law governing suit dictates which facts are material or not in determining whether issue of material fact warrants grant of summary judgment. [Stover v. Eagle Products, Inc.](#), D.Kan.1995, 896 F.Supp. 1085. [Summary Judgment](#) 🏠 47(2)

Genuine issue precluding summary judgment is not established unless evidence, viewed in light most favorable to nonmoving party, would allow jury to return verdict for that party, while whether fact is material is determined by substantive law. [Gatling v. Washington Metropolitan Area Transit Authority](#), D.D.C.1994, 866 F.Supp. 28. [Summary Judgment](#) 🏠 46; [Summary Judgment](#) 🏠 47(2); [Summary Judgment](#) 🏠 75

On motion for summary judgment, substantive law governing case will identify those facts that are material, and only disputes over facts that might affect outcome of suit under governing law will properly preclude entry of summary judgment. [Bellomo v. United Arab Shipping Co. \(S.A.G.\)](#), E.D.N.Y.1994, 863 F.Supp. 107. [Summary Judgment](#) 🏠 47(2)

Substantive law determines materiality of issues, for purposes of summary judgment; that is, only those facts that might be outcome-determinative under the current law are material. [Boginis v. Marriott Ownership Resorts, Inc.](#), E.D.Va.1994, 855 F.Supp. 862, affirmed in part, reversed in part 57 F.3d 1065. [Summary Judgment](#) 🏠 47(2)

On motion for summary judgment, substantive law identifies which facts are material. [Fink v. New York City Dept. of Personnel](#), S.D.N.Y.1994, 855 F.Supp. 68, affirmed 53 F.3d 565. [Summary Judgment](#) 🏠 47(2)

Materiality of fact issue on motion for summary judgment is determined under applicable substantive law. [Toledo v. Ayerst-Wyeth Pharmaceutical, Inc.](#), D.Puerto Rico 1993, 852 F.Supp. 91. [Summary Judgment](#) 🏠 47(2)

Substantive law governing claim determines whether fact is material for summary judgment purposes. [Kahn v. Sprouse](#), D.Or.1993, 842 F.Supp. 423. [Summary Judgment](#) 🏠 47(2)

To determine whether factual dispute between parties is "material," for purposes of precluding summary judgment, substantive law will identify which facts are material. [Sierra Perez v. U.S.](#), D.Puerto Rico 1991, 779 F.Supp. 637. [Summary Judgment](#) 🏠 47(2)

In order to determine whether factual dispute between parties is "material," substantive law will identify which facts are material and only dispute over facts that might affect outcome of suit under governing law will properly preclude entry of summary judgment. [Mercado Garcia v. Ponce Federal Bank](#), F.S.B., D.Puerto Rico 1991, 779 F.Supp. 620, affirmed 979 F.2d 890. [Summary Judgment](#) 🏠 47(2)

In context of motion for summary judgment, substantive law will determine which facts are material. [Little v. St. Mary Magdalene Parish](#), W.D.Pa.1990, 739 F.Supp. 1003, affirmed 929 F.2d 944. [Summary Judgment](#) 🏠 47(2)

---- Privacy, law governing

In action against New York corporation for invasion of right of privacy by publication of magazine article, which was circulated in Pennsylvania where plaintiffs lived and were known, defendant's right to summary judgment was viewed as depending upon law of privacy as it existed and was developing as part of Pennsylvania tort law. [Jenkins v. Dell Pub. Co.](#), C.A.3 (Pa.) 1958, 251 F.2d 447, certiorari denied 78 S.Ct. 1362, 357 U.S. 921, 2 L.Ed.2d 1365. [Federal Courts](#) 🏠 3067(1)

Though action for alleged invasion of right of privacy throughout the United States by use of picture in magazine was brought in Illinois, in determining whether defendant was entitled to summary judgment, plaintiff's cause of action was viewed in light of the law in each jurisdiction where right to bring action for invasion of privacy was recognized. [Branson v. Fawcett Publications, E.D.Ill.1954, 124 F.Supp. 429. Summary Judgment 228; Torts 375](#)

---- Substantive questions, law governing

Court reviews evidence on summary judgment under the substantive law and based on evidentiary burden that party will face at trial on particular claim. [John Hancock Mut. Life Ins. Co. v. Weisman, C.A.10 \(N.M.\) 1994, 27 F.3d 500. Summary Judgment 80](#)

Determination whether a genuine issue of fact exists and ultimately whether summary judgment is appropriate is a matter of federal law while what facts are material to a particular claim or issue of substantive law in diversity case is a matter of state law, and, hence, extent to which fact questions in general predominate a particular issue of substantive law in diversity cases will necessarily be heavily influenced by state law. [Impossible Electronic Techniques, Inc. v. Wackenhut Protective Systems, Inc., C.A.5 \(Fla.\) 1982, 669 F.2d 1026. Federal Courts 3045\(5\)](#)

In diversity case, substantive law of forum state was applicable, but this rule, directly applicable, precluding use of summary judgment when there is genuine issue as to any material fact, rendered it unnecessary to consider state law which might provide to contrary. [General Acc. Fire and Life Assur. Corp., Ltd. v. Akzona, Inc., C.A.4 \(N.C.\) 1980, 622 F.2d 90. Federal Courts 3002; Federal Courts 3045\(5\)](#)

Law of forum state was applied in determining substantive questions concerning summary judgment in diversity case. [Luckett v. Bethlehem Steel Corp., C.A.10 \(Okla.\) 1980, 618 F.2d 1373. Federal Courts 3045\(5\)](#)

Minnesota Supreme Court decision in *Quast v. Prudential Property & Casualty Co.*, which set forth the way in which an insurer may defend an insured's claim on the basis of supposed arson, namely, by proffering evidence of motive and incendiary origin, was a substantive rule for *Erie* purposes, and thus did not conflict with federal rule governing summary judgment, and thus *Quast* was not displaced by the federal rule; *Quast* set forth the elements of an insurer's arson defense, and federal rule, by contrast, defined the quantum of evidence necessary to support that defense. [Weber v. Travelers Home and Marine Ins. Co., D.Minn.2011, 801 F.Supp.2d 819. Federal Courts 3045\(5\); Federal Courts 3079\(6\)](#)

Genuine issues of material fact as to whether building owner was domiciled or residing in Louisiana and as to whether vinyl wall covering used in building was manufactured, produced, or acquired in Louisiana precluded summary judgment for manufacturer of wall covering on its claim that owner's claims against manufacturer, arising after building was beset by mildew and leaks, were governed by Louisiana law, and that owner was thereby precluded from recovering punitive damages. [New Orleans Assets, L.L.C. v. Carl E. Woodward, L.L.C., E.D.La.2003, 278 F.Supp.2d 776. Summary Judgment 244](#)

In diversity case, substantive summary judgment issues are determined by state law. [Ray v. Continental Western Ins. Co., D.Nev.1996, 920 F.Supp. 1094. Federal Courts 3005](#)

General standards governing propriety of granting summary judgment motion must be informed by particular substantive law at issue. [Wong v. Michael Kennedy, P.C., E.D.N.Y.1994, 853 F.Supp. 73. Summary Judgment 47\(2\)](#)

Substantive law governing action determines whether element is essential, for purposes of general rule that summary judgment is appropriate when nonmovant fails to make showing sufficient to establish existence of element essential to that party's case and on which that party will bear burden of proof at trial. [U.S. v. Rutland, Inc., S.D.Ga.1994, 849 F.Supp. 806, affirmed 46 F.3d 71. Summary Judgment 47\(2\); Summary Judgment 51](#)

To determine whether party opposing summary judgment motion has met his or her burden, court focuses on both materiality and genuineness of factual issues raised by nonmovant; it is substantive law's identification of which facts are critical and which facts are irrelevant that governs. [Reyes v. Koehler, S.D.N.Y.1993, 815 F.Supp. 109. Summary Judgment 45\(1\); Summary Judgment 47\(2\)](#)

Substantive law governing action determines whether element is essential to case of party moving for summary judgment. [Antonic Rigging and Erecting of Missouri, Inc. v. Foundry East Ltd. Partnership, S.D.Ga.1991, 773 F.Supp. 420. Summary Judgment](#) 🗝️ 47(2)

---- Procedural questions, law governing

Janitorial contractor's summary judgment burden in motion for summary judgment in airline employee's personal injury action, arising out of slip and fall on puddle of water in restroom, was procedural rather than substantive in nature, so as to subject it to federal standard for review rather than the standard that would apply in a New York state court, which would have placed initial burden on contractor to demonstrate, prima facie, that it neither created the hazardous condition nor had actual or constructive notice of its existence for a sufficient length of time to discover and remedy it. [Doona v. OneSource Holdings, Inc., E.D.N.Y.2010, 680 F.Supp.2d 394. Federal Courts](#) 🗝️ 3045(5)

---- Sufficiency of complaint, law governing

Grant of summary judgment to plaintiffs suing on notes was not improper on theory of insufficiency of summary proof under Texas law since sufficiency of a complaint or adequacy of proof for summary judgment under this rule are determined by recourse to federal law. [Lloyd v. Lawrence, C.A.5 \(Tex.\) 1973, 472 F.2d 313, on remand 60 F.R.D. 116. Federal Courts](#) 🗝️ 3045(5)

---- Sufficiency of evidence, law governing

Federal law governed whether plaintiff presented sufficient evidence of causation to defeat refinery company's summary judgment motion in federal court, state law governed what theories of causation were permissible and the general means permitted to establish causation, in action asserting state-law claims for negligence, negligence per se, and strict liability, based on allegations that plaintiff's acute myelocytic leukemia (AML) was caused by her exposure to benzene emitted from refinery which she had lived near as a child. [Hall v. Conoco Inc., C.A.10 \(Okla.\) 2018, 886 F.3d 1308. Federal Courts](#) 🗝️ 3067(2)

Sufficiency of evidence in face of summary judgment motion raises federal evidentiary concerns, rendering resort to state law improper. [Bernhardt By and Through Bernhardt v. Richardson-Merrell, Inc., C.A.5 \(Miss.\) 1990, 892 F.2d 440. Federal Courts](#) 🗝️ 3042(4)

State regulation and control

Because the burden-shifting framework of the Texas Citizens Participation Act (TCPA), an anti-SLAPP statute, imposes additional evidentiary weighing requirements beyond those found in rules governing motions to dismiss and summary judgment, and answers the same question as those rules, the state law cannot apply in federal court; the TCPA operates largely without pre-decisional discovery. [Klocke v. Watson, C.A.5 \(Tex.\) 2019, 936 F.3d 240, revised. Federal Courts](#) 🗝️ 3033(2)

California Anti-Strategic Lawsuit Against Public Participation (anti-SLAPP) statute's 60-day time limit for motion to strike complaint did not apply in Army sergeant's federal court action against screenwriter, director, and producer of motion picture, for defamation and invasion of privacy in connection with film's allegedly false portrayal of sergeant; timing controls imposed by anti-SLAPP statute required motion to strike 60 days after service of complaint, which directly collided with more permissive timeline of federal procedure rules, which allowed motion for summary judgment until 30 days after close of discovery. [Sarver v. Chartier, C.A.9 \(Cal.\) 2016, 813 F.3d 891. Pleading](#) 🗝️ 358

District of Columbia's (D.C.) Anti-Strategic Lawsuits Against Public Participation Act (Anti-SLAPP Act) did not apply to federal court sitting in diversity, and thus, court could not apply special motion to dismiss provision of the anti-SLAPP Act or award attorney fees under the Act to journalist with respect to allegedly illegitimate defamation claim against her arising out of her posting of picture in social media depicting political activist making hand gesture, arguably associated with white power movement, with caption "just two people doing a white power hand gesture"; the Federal Rules of Civil Procedure controlled the question of defamation claim's viability, since both anti-SLAPP and the Federal Rules answered question about circumstances under which court must dismiss a case before trial in different ways. [Fairbanks v. Roller, D.D.C.2018, 314 F.Supp.3d 85. Federal Courts](#) 🗝️ 3033(2)

District of Columbia's anti-SLAPP (Strategic Lawsuit Against Public Participation) statute's special motion to dismiss procedure attempted to answer same question covered by federal

rules governing motions to dismiss and for summary judgment, whether court could dismiss company's tort claims with prejudice on preliminary basis based on pleadings or on matters outside pleadings merely because company had not demonstrated that claim was likely to succeed on merits, so that District of Columbia law would be preempted to extent that it would not apply in federal court sitting in diversity, if federal rules were valid under Rules Enabling Act; although special motion to dismiss might raise arguments that were identical to motion to dismiss, District statute ultimately mandated dismissal with prejudice if plaintiff failed to demonstrate likelihood of success on merits, even where plaintiff raised genuine issue of material fact and even where dismissal without prejudice was appropriate. [3M Co. v. Boulter, D.D.C.2012, 842 F.Supp.2d 85](#), appeal dismissed [2012 WL 5897085](#), motion for relief from judgment denied [290 F.R.D. 5. Federal Courts](#) 📌 3033(2)

The procedure Minnesota's legislature set up for evaluating immunity through the lens of a motion to dismiss pursuant to anti-Strategic Lawsuits Against Public Participation (SLAPP) law cannot be applied in federal court because doing so would directly conflict with the Federal Rule of Civil Procedure governing summary judgment by requiring the weighing of evidence on a motion that considers matters outside the complaint in evaluating the merits of a claim and would violate the plaintiffs' Seventh Amendment right to a jury trial. [Unity Healthcare, Inc. v. County of Hennepin, D.Minn.2015, 308 F.R.D. 537](#), appeal dismissed [2016 WL 11339506. Jury](#) 📌 31.1; [Pleading](#) 📌 360

Supreme Court, applicability of rule

In resolving motions for summary judgment in cases within the Supreme Court's original jurisdiction, the Supreme Court is not technically bound by the Federal Rules of Civil Procedure, but it uses [Rule 56](#) as a guide. [Alabama v. North Carolina, U.S.2010, 130 S.Ct. 2295, 560 U.S. 330, 176 L.Ed.2d 1070. Federal Courts](#) 📌 3125

Directory nature of rule

This rule providing summary judgment procedure affects substantial rights of litigants and is not merely directory. [Hoffman v. Babbitt Bros. Trading Co., C.A.9 \(Ariz.\) 1953, 203 F.2d 636. Summary Judgment](#) 📌 1

Drastic nature of rule

Relief by way of summary judgment is drastic, and should be applied with caution to end that litigants will have trial on bona fide factual disputes, and if there is any issue as to material fact dispositive of right or duty, case is not ripe for summary judgment. [Jones v. Nelson, C.A.10 \(Okla.\) 1973, 484 F.2d 1165. Summary Judgment](#) 📌 4; [Summary Judgment](#) 📌 47(1)

As a procedural matter, granting summary judgment, while a drastic remedy, is a wholesome one where applicable to circumstances, but it is never warranted except on a clear showing that no genuine issue as to any material fact remains for trial. [Mintz v. Mathers Fund, Inc., C.A.7 \(Ill.\) 1972, 463 F.2d 495. See, also, Peoples Outfitting Co., Inc. v. General Elec. Credit Corp., Inc., C.A.Ind.1977, 549 F.2d 42; Kirk v. Home Indem. Co., C.A.III.1970, 431 F.2d 554. Summary Judgment](#) 📌 45(1)

Trial court has a duty to grant summary judgment motion in an appropriate case, but that relief is drastic and should be applied with caution to the end that litigants will have a trial on bona fide factual issues. [Smoot v. Chicago, R. I. & P. R. Co., C.A.10 \(Okla.\) 1967, 378 F.2d 879. See, also, Ando v. Great Western Sugar Co., C.A.Wyo.1973, 475 F.2d 531; Machinery Center, Inc. v. Anchor Nat. Life Ins. Co., C.A.Utah 1970, 434 F.2d 1. Summary Judgment](#) 📌 4

Summary judgment, as authorized by this rule, is a drastic action and available only in cases where there is no material issue of fact, and formal trial would be fruitless. [Frey v. Frankel, C.A.10 \(Kan.\) 1966, 361 F.2d 437. See, also, Marsden v. Patane, C.A.Fla.1967, 380 F.2d 489; Morrison Flying Service v. Deming Nat. Bank, C.A.N.M.1965, 340 F.2d 430. Summary Judgment](#) 📌 4; [Summary Judgment](#) 📌 43

Summary judgment is harsh remedy that should be granted only when moving party has established his right to judgment with such clarity as not to give rise to controversy. [International Ins. Co. v. Metropolitan St. Louis Sewer Dist., E.D.Mo.1996, 938 F.Supp. 568. Summary Judgment](#) 📌 54

As drastic remedy, summary judgment is only available when it is clear and no genuine issue of material fact exists which needs to be resolved at trial, and movant is entitled to judgment as matter of law. [Doolittle v. Ruffo](#), N.D.N.Y.1994, 882 F.Supp. 1247. [Summary Judgment](#) 📌 45(2)

Summary judgment is drastic device which should not be granted when there are major factual contentions in dispute, particularly when one party has yet to exercise its opportunities for pretrial discovery. [Higgins v. Monsanto Co.](#), N.D.N.Y.1994, 862 F.Supp. 751. [Summary Judgment](#) 📌 43

Summary judgment is drastic remedy which should be granted only when it is clear that requirements of this rule have been satisfied. [Auletta v. Tully](#), N.D.N.Y.1983, 576 F.Supp. 191, affirmed 732 F.2d 141, affirmed 732 F.2d 142. [Summary Judgment](#) 📌 54

Although summary judgment is drastic remedy and should be used sparingly, it will not be denied merely because pleadings create appearance of a dispute. [Katz v. Abrams](#), E.D.Pa.1982, 549 F.Supp. 668. [Summary Judgment](#) 📌 4

Summary judgment, as drastic remedy, will be granted only when there is no room for controversy. [Matter of Bell, Bkrcty.](#)N.D.Ga.1995, 189 B.R. 543. [Bankruptcy](#) 📌 2164.1; [Summary Judgment](#) 📌 4; [Summary Judgment](#) 📌 54

Extreme nature of rule

Summary judgment is an extreme remedy and should not be granted unless it is clear beyond controversy that moving party is entitled to judgment as a matter of law. [U. S. v. Porter](#), C.A.8 (Mo.) 1978, 581 F.2d 698. [Summary Judgment](#) 📌 4; [Summary Judgment](#) 📌 64

Summary judgment is an extreme remedy, one which is not to be entered unless the movant has established his right to a judgment with such clarity as to leave no room for controversy and that the other party is not entitled to recover under any discernible circumstances. [Ozark Milling Co., Inc. v. Allied Mills, Inc.](#), C.A.8 (Ark.) 1973, 480 F.2d 1014. See, also, [Mandel v. U.S.](#), C.A.8 (Ark.) 1983, 719 F.2d 963; [Portis v. Folk Const. Co., Inc.](#), C.A.Ark.1982, 694 F.2d 520; [Avenson v. Zegart](#), D.C.Minn.1984, 577 F.Supp. 958; [Reed, Wible and Brown, Inc. v. Mahogany Run Development Corp.](#), D.C.Virgin Islands 1982, 550 F.Supp. 1095. [Summary Judgment](#) 📌 54

Summary judgment is an extreme remedy which should be sparingly employed. [Giordano v. Lee](#), C.A.8 (Mo.) 1970, 434 F.2d 1227, certiorari denied 91 S.Ct. 2250, 403 U.S. 931, 29 L.Ed.2d 709. [Summary Judgment](#) 📌 4

Summary judgment is an extreme remedy which should not be entered except where movant is entitled to its allowance beyond all doubt. [City Nat. Bank of Fort Smith, Ark. v. Vanderboom](#), C.A.8 (Ark.) 1970, 422 F.2d 221, certiorari denied 90 S.Ct. 2196, 399 U.S. 905, 26 L.Ed.2d 560. [Summary Judgment](#) 📌 4

Summary judgment is lethal weapon and courts must be mindful of its aims and targets and beware of overkill in its use. [Brunswick Corp. v. Vineberg](#), C.A.5 (Fla.) 1967, 370 F.2d 605. [Summary Judgment](#) 📌 1

Summary judgment remedy is extreme and not to be used as a substitute for trial, and and doubt as to existence of triable issue of material fact must be resolved against movant. [Jacobson v. Maryland Cas. Co.](#), C.A.8 (Mo.) 1964, 336 F.2d 72, certiorari denied 85 S.Ct. 655, 379 U.S. 964, 13 L.Ed.2d 558. See, also, [Smoot v. Chicago, R.I. & P.R. Co.](#), C.A.Okl.1967, 378 F.2d 879; [C.F.W. Const.Co. v. Travelers Ins. Co.](#), C.A.Tenn.1966, 363 F.2d 557; [Thompson v. U.S.](#), C.A.Kan.1961, 291 F.2d 67; [Bruce Const. Corp. v. U.S. for Use of Westinghouse Elec. Supply Co.](#), C.A.Fla.1957, 242 F.2d 873; [Homan Mfg. Co. v. Long](#), C.A.Ill.1957, 242 F.2d 645. [Summary Judgment](#) 📌 1; [Summary Judgment](#) 📌 75

Summary judgment is extreme remedy which should not be granted unless moving party has established his right to judgment beyond controversy. [U.S. v. Pepper's Steel and Alloys, Inc.](#), S.D.Fla.1993, 823 F.Supp. 1574, affirmed in part, reversed in part 87 F.3d 1329. [Summary Judgment](#) 📌 4

Summary judgment is a severe remedy that should be cautiously applied. [Daniell v. Ford Motor Co., Inc.](#), D.C.N.M.1984, 581 F.Supp. 728. [Summary Judgment](#) 📌 4

Mandatory nature of rule

Provision of this rule for notice to opposing party and opportunity for him to serve opposing affidavits is mandatory and noncompliance therewith deprives court of authority to grant summary judgment. [Torres v. First State Bank of Sierra County, C.A.10 \(N.M.\) 1977, 550 F.2d 1255](#). See, also, [Franklin v. Oklahoma City Abstract & Title Co., C.A.Okl.1978, 584 F.2d 964](#). [Summary Judgment](#) 276; [Summary Judgment](#) 310

This rule dealing with summary judgment is specifically mandatory when matters outside pleadings are considered in disposing of motion to dismiss for failure to state a cognizable claim, or for judgment on pleadings, and disposition under this rule dealing with summary judgment appears to be no less mandatory when analogous motions are considered at pretrial stage. [Syracuse Broadcasting Corporation v. Newhouse, C.A.2 \(N.Y.\) 1959, 271 F.2d 910](#). [Summary Judgment](#) 278(2)

Summary judgment is mandatory if, after moving party demonstrates absence of genuine issue of material fact, opposing party fails to go behind the pleadings and present specific facts showing that a genuine factual issue exists. [In re Greenwood Air Crash, S.D.Ind.1995, 924 F.Supp. 1511](#). [Summary Judgment](#) 45(1)

Mandatory aspects of summary judgment rule must be followed by district courts, and, as a result, summary judgment must be entered where appropriate. [Corinthian Pharmaceutical Systems, Inc. v. Lederle Laboratories, S.D.Ind.1989, 724 F.Supp. 605](#). [Summary Judgment](#) 1

Radical nature of rule

Summary judgment is radical device and should be granted circumspectively by trial court. [United Indus. Syndicate, Inc. v. Western Auto Supply Co., E.D.Mo.1981, 527 F.Supp. 869](#), affirmed in part, reversed in part on other grounds [686 F.2d 1312](#). [Summary Judgment](#) 4

Cautious, limited or sparing application of rule

Summary judgment is to be granted cautiously in order to preserve substantive rights; nevertheless, it is entirely proper where, after following proper procedures, no genuine issue of material fact remains. [Exxon Corp. v. National Foodline Corp., Cust. & Pat.App.1978, 579 F.2d 1244, 198 U.S.P.Q. 407](#). [Summary Judgment](#) 4; [Summary Judgment](#) 45(1)

Summary judgment must be used sparingly since its prophylactic function, when exercised, cuts off a party's right to present its case to the jury. [Egelston v. State University College at Geneseo, C.A.2 \(N.Y.\) 1976, 535 F.2d 752](#). [Summary Judgment](#) 4

Availability of relief under this rule is limited. [Klinge v. Lutheran Charities Ass'n of St. Louis, C.A.8 \(Mo.\) 1975, 523 F.2d 56](#). [Summary Judgment](#) 1

Summary judgment should be applied with caution. [International Ass'n of Machinists and Aerospace Workers, Dist. No. 8, AFL-CIO v. J. L. Clark Co., C.A.7 \(Ill.\) 1972, 471 F.2d 694](#). [Summary Judgment](#) 4

Courts should not be reluctant to grant summary judgment in appropriate cases. [Witter v. Abell-Howe Co., W.D.N.Y.1991, 765 F.Supp. 1144](#). [Summary Judgment](#) 1

Relief contemplated by summary judgment rule is drastic and should be applied with caution, to the end that litigants will have a trial on bona fide factual issues. [Frackowiak v. Farmers Ins. Co., Inc., D.C.Kan.1976, 411 F.Supp. 1309](#). [Summary Judgment](#) 4

Favorable view of rule

Summary judgments are looked on with favor and will be upheld unless some genuine issue of fact is presented. [U.S. for Use of Edward E. Morgan Co. v. Maryland Cas. Co., C.C.A.5 \(La.\) 1945, 147 F.2d 423](#). [Summary Judgment](#) 3; [Summary Judgment](#) 45(1)

Summary judgment is not a disfavored procedural shortcut, but rather essential thread in the fabric of the federal rules that eliminates unfounded claims without recourse to costly and lengthy trial. [R.J. Longo Const. Co., Inc. v. Transit America, Inc., D.N.J.1996, 921 F.Supp. 1295](#). [Summary Judgment](#) 3

Summary judgment is no longer a disfavored remedy. [Beloit Beverage Co. v. Winterbrook Corp., E.D.Wis.1995, 900 F.Supp. 1097](#). [Summary Judgment](#) 3

Summary judgment procedure is not disfavored procedural shortcut, but rather is integral part of the federal rules as a whole. [Mercantile Bank of Kansas City v. U.S., W.D.Mo.1994, 856 F.Supp. 1355. Summary Judgment 🏹 3](#)

Summary disposition is particularly favored in cases involving First Amendment rights. [Baugh v. CBS, Inc., N.D.Cal.1993, 828 F.Supp. 745. Summary Judgment 🏹 112](#)

Summary judgment rule is no longer disfavored procedure in federal practice and is integral part of the Federal Rules of Civil Procedure and recognized as party's right to demonstrate that certain claims have no factual basis and to have those unsupported claims disposed of prior to trial. [Waring v. William Morrow & Co., Inc., S.D.Tex.1993, 821 F.Supp. 1188. Summary Judgment 🏹 3](#)

Summary judgment procedure is properly regarded not as disfavored procedural shortcut, but rather as integral part of federal rules as whole, which are designed to secure the just, speedy, and inexpensive determination of every action. [Nagle v. Merrill Lynch, Pierce, Fenner & Smith, Inc., S.D.Iowa 1992, 790 F.Supp. 203. Summary Judgment 🏹 3](#)

Habeas corpus

Summary judgment rule applies to habeas proceedings. [Brandt v. Gooding, C.A.4 \(S.C.\) 2011, 636 F.3d 124. Habeas Corpus 🏹 801](#)

Discretion of court

A federal district court in passing on a motion for summary judgment performs what amounts to what may be called a negative discretionary function, given fact that court has no discretion to grant a motion for summary judgment, but even if court is convinced that moving party is entitled to such a judgment the exercise of sound judicial discretion may dictate that motion should be denied, and case fully developed. [McLain v. Meier, C.A.8 \(N.D.\) 1979, 612 F.2d 349, on remand 496 F.Supp. 462. Summary Judgment 🏹 1](#)

Trial courts are given wide latitude in determining whether entry of summary judgment in a particular situation is appropriate. [McSurely v. McClellan, C.A.D.C.1975, 521 F.2d 1024, 172 U.S.App.D.C. 364, on rehearing 553 F.2d 1277, 180 U.S.App.D.C. 101, certiorari granted 98 S.Ct. 260, 434 U.S. 888, 54 L.Ed.2d 173, certiorari dismissed 98 S.Ct. 3116, 438 U.S. 189, 57 L.Ed.2d 704. Summary Judgment 🏹 1](#)

Even where moving party has technically discharged his burden of establishing a right to summary judgment, trial court, in exercise of sound discretion, may decline to grant summary judgment. [Williams v. Howard Johnson's Inc. of Washington, C.A.4 \(Va.\) 1963, 323 F.2d 102. See, also, Continental Can Co. v. Crown Cork & Seal, Inc., D.C.Pa.1965, 39 F.R.D. 354.](#)

Exercise of sound discretion applies only in denying motions for summary judgment in appropriate circumstances. [National Screen Service Corp. v. Poster Exchange, Inc., C.A.5 \(Ga.\) 1962, 305 F.2d 647. Summary Judgment 🏹 351](#)

Where granting of relief is dependent upon sound discretion of court, trial court should proceed cautiously in granting summary judgment. [Booth v. Barber Transp. Co., C.A.8 \(Neb.\) 1958, 256 F.2d 927. See, also, Protective Closures Co. v. Clover Industries, Inc., D.C.N.Y.1953, 112 F.Supp. 342. Summary Judgment 🏹 4](#)

District court would deny plaintiffs' motion for leave to file a surreply to summary judgment motion brought by manufacturer of wheelchair conversion kit in plaintiffs' action under the Arizona Assistive Device Warranties Act (AADWA), where the allegedly new or rebuttal evidence did not affect the outcome of either parties' motion for summary judgment. [Flowers-Carter v. Braun Corporation, D.Ariz.2021, 530 F.Supp.3d 818, reconsideration denied 2021 WL 1561504, motion to certify appeal denied 2021 WL 2416805. Summary Judgment 🏹 287](#)

Even if standards of summary judgment rule are met, court has discretion to deny motion for summary judgment if it believes that better course would be to proceed to full trial. [American Stone Diamond, Inc. v. Lloyds of London, S.D.Tex.1996, 934 F.Supp. 839. Summary Judgment 🏹 351](#)

Even if standards of rule for grant of summary judgment are met, court has discretion to deny motion for summary judgment if it believes that better course would be to proceed to

full trial. [Becerra v. Asher, S.D.Tex.1996, 921 F.Supp. 1538](#), affirmed [105 F.3d 1042](#), rehearing and suggestion for rehearing en banc denied [111 F.3d 894](#), supplemented on denial of rehearing, certiorari denied [118 S.Ct. 82, 522 U.S. 824, 139 L.Ed.2d 40](#). [Summary Judgment](#) 🏠 351

Denial of motion for summary judgment, based on failure of party to submit statement of material facts as to which there was no genuine issue, was discretionary on part of court. [W.A. Taylor & Co. v. Griswold & Bateman Warehouse Co., N.D.Ill.1989, 719 F.Supp. 697](#). [Summary Judgment](#) 🏠 351

Federal district court has no discretion to grant motion for summary judgment; however, even if district judge feels that summary judgment in a given case is technically proper, sound judicial policy and the proper exercise of judicial discretion may prompt him to deny the motion and permit case to be developed fully at trial since ultimate legal rights of movant can always be protected in the course of or even after trial. [Olberding v. U.S. Dept. of Defense, Dept. of the Army, S.D.Iowa 1982, 564 F.Supp. 907](#), affirmed [709 F.2d 621](#). [Summary Judgment](#) 🏠 1; [Summary Judgment](#) 🏠 355

Jury trial--Generally

Where defendant contractor had demanded jury trial and jury had already been empaneled when government moved for summary judgment, there was no waiver of contractor's right to jury trial under such circumstances, though contractor filed cross motion for summary judgment. [U.S. v. Fred A. Arnold, Inc., C.A.9 \(Cal.\) 1978, 573 F.2d 605](#). [Jury](#) 🏠 28(5)

Granting of motion for summary judgment in appropriate case does not infringe upon right to trial by jury. [King v. United Ben. Fire Ins. Co., C.A.10 \(Okla.\) 1967, 377 F.2d 728](#), certiorari denied [88 S.Ct. 99, 389 U.S. 857, 19 L.Ed.2d 124](#). See, also, [Page v. Work, C.A.Cal.1961, 290 F.2d 323](#), certiorari denied [82 S.Ct. 121, 368 U.S. 875, 7 L.Ed.2d 76](#); [DeJulis v. Alexander, D.C.Wyo.1975, 393 F.Supp. 823](#); [Denver Rockets v. All-Pro Management, Inc., D.C.Cal.1971, 325 F.Supp. 1049](#); [In re Georgia Jewelers, Inc., D.C.Ga.1962, 219 F.Supp. 386](#); [Securities and Exchange Commission v. Payne, D.C.N.Y.1940, 35 F.Supp. 873](#). [Jury](#) 🏠 31.2(4); [Jury](#) 🏠 34(3)

Granting summary judgment in favor of developers, manufacturers, and distributors of contraceptive product did not violate consumers' Seventh Amendment right to a jury trial, in multi-district products liability action alleging that intrauterine device caused consumers to develop idiopathic intracranial hypertension (IIH), even though district court decided to stage discovery so as to front-load discovery on potentially dispositive issue of general causation; if summary judgment motions had been deferred until fact and expert discovery was conducted as to the facts and circumstances attendant to each of the approximately 920 plaintiffs, it would have consumed enormous party resources. [In re Mirena IUS Levonorgestrel-Related Products Liability Litigation \(No. II\), S.D.N.Y.2019, 387 F.Supp.3d 323](#), affirmed [982 F.3d 113](#). [Jury](#) 🏠 31.2(4)

To prevent summary judgment, disputed facts must be such that if they were proven at trial, reasonable jury could return verdict for a nonmoving party. [Vogt v. Emerson Elec. Co., M.D.Tenn.1992, 805 F.Supp. 506](#). [Summary Judgment](#) 🏠 46

Summary judgment may not be used to deprive litigant of full trial of genuine fact issues, but it may be granted where there are no disputed issues of material fact. [Sachs v. Continental Oil Co., E.D.Pa.1978, 454 F.Supp. 614](#). [Summary Judgment](#) 🏠 46

Litigant has right to trial where there is slightest doubt as to the facts. [Rains v. Cascade Industries, Inc., S.D.N.Y.1966, 258 F.Supp. 974, 150 U.S.P.Q. 800](#). See, also, [Car & General Ins. Corp. v. Goldstein, D.C.N.Y.1959, 179 F.Supp. 888](#), affirmed [277 F.2d 162](#). [Summary Judgment](#) 🏠 54

---- Questions of fact, jury trial

When a jury trial has been requested in a trademark case and when the facts do not warrant entry of summary judgment or judgment as a matter of law, the question whether tacking is warranted must be decided by a jury; abrogating [Van Dyne-Crotty, Inc. v. Wear-Guard Corp., 926 F.2d 1156](#), [Data Concepts, Inc. v. Digital Consulting, Inc., 150 F.3d 620](#). [Hana Financial, Inc. v. Hana Bank, U.S.2015, 135 S.Ct. 907, 574 U.S. 418, 190 L.Ed.2d 800, 113 U.S.P.Q.2d 1365](#). [Trademarks](#) 🏠 1688

No genuine issue of material fact exists on motion for summary judgment unless there is sufficient evidence favoring nonmoving party for jury to return verdict for that party.

[Coleman v. Ramada Hotel Operating Co., C.A.7 \(Ill.\) 1991, 933 F.2d 470. Summary Judgment](#) 🏹 46

Inmate did not have absolute right to jury trial, based on magistrate's grant of motion for jury trial and defendants' failure to oppose jury trial motion, such that it was improper for district court to deny him jury trial by granting summary judgment on civil rights complaint by prisoner against state corrections officials; federal rule requires rendering of summary judgment if there is no genuine issue as to material fact, function of jury is to try material facts, and where no such facts are in dispute, there is no occasion for jury trial. [Plaisance v. Phelps, C.A.5 \(La.\) 1988, 845 F.2d 107. Jury](#) 🏹 31.2(4); [Summary Judgment](#) 🏹 45(1)

Summary judgment procedure is properly and wholesomely invoked when it eliminates a useless trial but not when it would cut a litigant off from his right to have a jury resolve a factual issue bearing significantly on the outcome of the litigation. [Bloomgarden v. Coyer, C.A.D.C.1973, 479 F.2d 201, 156 U.S.App.D.C. 109. Summary Judgment](#) 🏹 2

Party's right to trial may not be cut off by summary judgment if a genuine issue of fact exists whose resolution in his favor on a trial would bar entry of judgment against him. [Season-All Industries, Inc. v. Türkiye Sise Ve Cam Fabrikalari, A. S., C.A.3 \(Pa.\) 1970, 425 F.2d 34. Summary Judgment](#) 🏹 45(1)

The summary judgment procedure does not permit litigant to be cut off from his right to trial by jury if he really has issues to try. [Harvey v. Great Atlantic & Pac. Tea Co., C.A.5 \(Miss.\) 1968, 388 F.2d 123. Summary Judgment](#) 🏹 1

Even if defendant was entitled to jury trial otherwise, plaintiffs as moving parties were entitled to summary judgment in absence of any genuine issue of material fact. [Robinson v. Brown, C.A.6 \(Tenn.\) 1963, 320 F.2d 503, certiorari denied 84 S.Ct. 662, 376 U.S. 908, 11 L.Ed.2d 607. Summary Judgment](#) 🏹 43

Summary judgment may be entered where there is no genuine issue as to any material fact and moving party is entitled to judgment as a matter of law, but it cannot be invoked to deprive litigants of their right to trial by jury if there remain genuine issues of material facts to be tried. [Progress Development Corp. v. Mitchell, C.A.7 \(Ill.\) 1961, 286 F.2d 222. See, also, Haag v. International Tel. & Tel. Corp., C.A.Ind.1963, 324 F.2d 205. Summary Judgment](#) 🏹 45(2)

Trial judge should be slow in granting a motion for summary judgment depriving a party of his right to trial by jury where there is a reasonable indication that a material fact is in dispute. [Estopp v. Norfolk & W. Ry. Co., C.A.6 \(Ky.\) 1951, 192 F.2d 889. See, also, Aetna Ins. Co. v. Cooper Wells & Co., C.A.Mich.1956, 234 F.2d 342; Begnaud v. White, C.A.Tenn.1948, 170 F.2d 323; Stone v. Nelmor Corp., D.C.Mich.1951, 101 F.Supp. 569. Summary Judgment](#) 🏹 54

Central inquiry in considering motion for summary judgment is whether evidence presents sufficient disagreement to require submission to jury or whether it is so one-sided that one party must prevail as matter of law. [Gawenda v. Werner Co., E.D.Mich.1996, 932 F.Supp. 183, affirmed 127 F.3d 1102. Summary Judgment](#) 🏹 64; [Summary Judgment](#) 🏹 93

There is no issue for trial, precluding summary judgment, unless there is sufficient evidence favoring nonmoving party for jury to return verdict for that party. [Texaco Inc. v. Berry Petroleum Corp., W.D.Okla.1994, 869 F.Supp. 1523. Summary Judgment](#) 🏹 50

When properly supported motion for summary judgment is made, there is no issue for trial unless there is sufficient evidence favoring nonmoving party for jury to return verdict for that party and, if evidence is merely colorable, or is not significantly probative, or is no more than scintilla, summary judgment may be granted. [Berry v. American Community Mut. Ins. Co., C.D.Ill.1994, 855 F.Supp. 256. Summary Judgment](#) 🏹 89

In ruling on motion for summary judgment, district court must not resolve factual disputes by weighing conflicting evidence since it is province of jury to assess probative value of evidence. [Toney v. Kawasaki Heavy Industries, Ltd., S.D.Miss.1991, 763 F.Supp. 1356, affirmed 975 F.2d 162. Summary Judgment](#) 🏹 96

Whether case is to be tried by judge or jury, once party moving for summary judgment has met its initial burden of disproving existence of genuine issue of material fact, it is incumbent upon party opposing summary judgment to establish that genuine factual dispute does exist. [Klausner v. Ferro](#), E.D.N.Y.1985, 604 F.Supp. 1188, affirmed 788 F.2d 3. [Summary Judgment](#) 🏠 78

Bench trial

It was appropriate, and not a violation of the party presentation principle, for district court to resolve plan participant's ERISA action challenging insurer's denial of long-term disability (LTD) benefits by conducting bench trial based on the administrative record after the parties had moved for summary judgment and the court held a hearing on the motions; court did not reshape the legal question presented by the parties, it simply adjusted the procedural mechanism it would use to address the correctness of insurer's decision, insurer had notice that a bench trial was on the table, as participant specifically requested the use of the rule governing bench trials, and both parties acknowledged at summary judgment hearing that the court's decision would implicate factfinding. [Tekmen v. Reliance Standard Life Insurance Company](#), C.A.4 (Va.) 2022, 55 F.4th 951. [Labor and Employment](#) 🏠 676

In nonjury case in which parties had submitted significant quantity of materials in support of and in opposition to summary judgment motions, district court could resolve any factual disputes based on such submissions. [Copelco Leasing Corp. v. Eyerman](#), E.D.Mo.1994, 855 F.Supp. 1049. [Summary Judgment](#) 🏠 301

Day in court

Summary judgment procedure should be used sparingly so that no plaintiff having scintilla of merit to his cause should be denied his day in court. [Manok v. Southeast Dist. Bowling Ass'n](#), C.D.Cal.1969, 306 F.Supp. 1215. See, also, [Dawn v. Sterling Drug, Inc.](#), D.C.Cal.1970, 319 F.Supp. 358. [Summary Judgment](#) 🏠 4

Conditional grant of judgment

Where there was discrepancy between the \$10,782.25 alleged to be the assessed deficiency constituting the claimed overpayment of estate tax and apparently admitted by defendant and the \$10,682.25 shown by other allegations in the pleadings as well as by documents made a part of the moving papers to be the true amount of the overpayment, the granting of summary judgment motion of taxpayers suing for refund would be conditioned upon a proper explanation of the discrepancy of \$100. [Herrick v. U.S.](#), E.D.N.Y.1952, 108 F.Supp. 20. [Summary Judgment](#) 🏠 238

Summary judgment treated as judgment on pleadings

Purported motion for summary judgment was, technically, a "motion for judgment on the pleadings" where no material outside of pleadings was offered in support of motion. [Steelman v. U. S.](#), Ct.Cl.1963, 318 F.2d 733, 162 Ct.Cl. 81. [Federal Civil Procedure](#) 🏠 1052

Summary judgment based entirely on pleadings and exhibits was functionally the same as judgment on pleadings. [Dyal v. Union Bag-Camp Paper Corp.](#), C.A.5 (Ga.) 1959, 263 F.2d 387. [Summary Judgment](#) 🏠 278(1)

Bulk of motion for summary judgment would be treated as one for judgment on pleadings where defendant did not submit any materials outside pleadings and primarily confined his arguments to legal sufficiency of complaint; however, defendant's motion would be addressed as one for summary judgment by incorporating co-defendant's factual support for separate summary judgment motion into defendant's motion to extent co-defendant made same legal arguments, as plaintiff would not be prejudiced thereby. [Calvetti v. Antcliff](#), D.D.C.2004, 346 F.Supp.2d 92. [Federal Civil Procedure](#) 🏠 1052; [Summary Judgment](#) 🏠 278(1)

Motion for summary judgment, unsupported by affidavits, is nothing more, in legal effect, than motion for judgment upon the pleadings. [Summers v. Penn Central Transp. Co.](#), S.D.Ohio 1981, 518 F.Supp. 864, 23 O.O.3d 260. [Federal Civil Procedure](#) 🏠 1052

Summary judgment treated as motion to dismiss

Where affidavits and exhibits were presented on motion for summary judgment, and trial court declined to pass on motion for summary judgment, and granted motion to dismiss complaint for failure to state a claim on which relief could be granted, court rule providing

that if, on motion asserting failure to state a claim on which relief can be granted, matters outside pleadings are presented, and are not excluded by court, motion shall be treated as one for summary judgment and be disposed of as provided by this rule providing for procedure on motions for summary judgment, was not applicable, and court did not err in granting motion to dismiss complaint. [Moffett v. Commerce Trust Co., C.A.8 \(Mo.\) 1951, 187 F.2d 242](#), certiorari denied [72 S.Ct. 32, 342 U.S. 818, 96 L.Ed. 618](#), rehearing denied [72 S.Ct. 163, 342 U.S. 879, 96 L.Ed. 661](#), rehearing denied [72 S.Ct. 1070, 343 U.S. 989, 96 L.Ed. 1375](#). [Federal Civil Procedure](#) 📖 1827.1; [Summary Judgment](#) 📖 278(2)

Trial court would not convert union's motions for summary judgment on union members racial discrimination claims to motions to dismiss for failure to state a claim, where action had been pending for over 20 years, with multiple extensions for discovery, motions for summary judgment had been discussed for almost one year prior to their filings, members had amended or attempted to amend complaint over five times, and both parties submitted exhibits as evidence outside the pleadings in support of their arguments on summary judgment. [Adams v. United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, Local 198, M.D.La.2020, 469 F.Supp.3d 615](#), on reconsideration in part [495 F.Supp.3d 392](#), reconsideration denied [2022 WL 193022](#). [Federal Civil Procedure](#) 📖 1825

It was appropriate to consider bank's motion as that of one to dismiss, for failure to state a claim, debtor's cross-claims seeking enforcement of loan agreement and asserting breach of contract and tortious interference claims arising from bank's purported termination of agreement, rather than motion for summary judgment, as there was no controversy regarding authenticity of agreement, and agreement was central to debtor's claim. [Prestige Capital Corp. v. Pipeliners of Puerto Rico, Inc., D.Puerto Rico 2012, 849 F.Supp.2d 240](#). [Federal Civil Procedure](#) 📖 1832; [Summary Judgment](#) 📖 278(1)

School district's motion for summary judgment, asserted in parents' ADA and Rehabilitation Act action, would be treated as motion to dismiss for lack of subject matter jurisdiction, or as judgment on the pleadings, where District Court's subject matter jurisdiction was being challenged, and parties had not conducted any discovery. [Baldessarre v. Monroe-Woodbury Cent. School Dist., S.D.N.Y.2011, 820 F.Supp.2d 490](#), affirmed [496 Fed.Appx. 131, 2012 WL 4039986](#). [Federal Civil Procedure](#) 📖 1052; [Federal Courts](#) 📖 2349

District court may treat motions for summary judgment asserting a lack of subject matter jurisdiction as factual attacks on the court's subject matter jurisdiction. [Brown v. Cranford Transp. Services, Inc., N.D.Ga.2002, 244 F.Supp.2d 1314](#). [Summary Judgment](#) 📖 28

On motion for summary judgment, court may dismiss complaint where its assertions do not make sense and are not buttressed by adequate corroboration to overcome such a circumstance. [Cecere v. County of Westchester, S.D.N.Y.1993, 814 F.Supp. 378](#). [Summary Judgment](#) 📖 80

Defendants' "motion for summary judgment" which concerned issue of personal jurisdiction was actually motion to dismiss and would be treated as such where appropriate rule was cited. [Brake Shop, Inc. v. Dacey, E.D.Mich.1992, 793 F.Supp. 154](#), reconsideration denied [830 F.Supp. 1008](#). [Federal Courts](#) 📖 2788

Sheriff's deputies' motion for summary judgment against motorist's [§ 1983](#) claim that roadblock violated motorist's constitutional rights under Fourth and Fourteenth Amendments would be treated as motion to dismiss pursuant to [Rule 12\(b\)\(6\)](#), as only arguments presented by deputies were that complaint failed to state claim upon which relief could be granted, and deputies submitted no affidavits or other exhibits in support of motion. [Reed v. Allegan County, W.D.Mich.1988, 688 F.Supp. 1239](#). [Summary Judgment](#) 📖 278(2)

Motion for summary judgment would be treated as motion to dismiss for failure to state a claim where record consisted solely of complaint, answer and motion. [McGee v. Schmidt, W.D.Wis.1976, 411 F.Supp. 43](#). [Federal Civil Procedure](#) 📖 1825

When motion for summary judgment is based upon allegation of lack of personal jurisdiction, it is proper to consider such motion as a motion to dismiss. [Meench v. Raymond Corp., E.D.Pa.1968, 283 F.Supp. 68](#). [Federal Courts](#) 📖 2788

Motion for summary judgment for lack of jurisdiction over subject matter may be treated and disposed of as motion to dismiss. [Navios Corp. v. National Maritime Union of America](#), E.D.Pa.1964, 236 F.Supp. 657, affirmed 359 F.2d 853, certiorari denied 87 S.Ct. 205, 385 U.S. 900, 17 L.Ed.2d 132. [Federal Courts](#) 📌 2078

Summary judgment is not the proper vehicle for raising issues of lack of jurisdiction, be it personal or subject matter jurisdiction; hence, court would treat such allegations as a motion to dismiss for want of jurisdiction and, since motion was based solely on the pleadings without any supporting materials, it was functionally the same as a motion to dismiss for failure to state claim upon which relief could be granted and would be treated as such. [Alloy Cast Steel Co. v. United Steel Workers of America](#), N.D.Ohio 1976, 70 F.R.D. 687, supplemented 429 F.Supp. 445. [Federal Civil Procedure](#) 📌 1825; [Federal Courts](#) 📌 2076; [Federal Courts](#) 📌 2078; [Federal Courts](#) 📌 2788; [Summary Judgment](#) 📌 28

Summary judgment treated as trial on record

In some circumstances, cross motions for summary judgment in federal employee case under § 2000e et seq. of Title 42 may be treated for purposes of review as mutual request for trial on stipulated administrative record. [Toney v. Bergland](#), C.A.D.C.1981, 645 F.2d 1063, 207 U.S.App.D.C. 138, on remand. [Federal Courts](#) 📌 3629(7)

Ripeness

Health insurance company's claim that Department of Health and Human Services' (HHS) risk-adjustment charges for two benefit years amounted to a confiscatory regulatory taking was ripe for summary judgment where, before the District Court, company explicitly stated that the case was "appropriately resolved by submission of an administrative record followed by cross-motions for summary judgment" and, further, that if HHS did not dispute certain facts "then the takings claim may be ripe for summary judgment," HHS did not dispute those facts, and the parties filed cross-motions for summary judgment, such that, by company's own representation, the takings claim was ripe for summary judgment, and company knew that "the takings claim may be ripe for summary judgment" for approximately four months after the motions were fully briefed and said nothing about the evidence that it later contended was pertinent. [Vista Health Plan, Incorporated v. United States Department of Health and Human Services](#), C.A.5 (Tex.) 2022, 29 F.4th 210, withdrawn and superseded 31 F.4th 946. [Summary Judgment](#) 📌 279

DUTY AND FUNCTION OF COURT

Duty and function of court generally

When reviewing a motion for summary judgment, the court should keep in mind: (1) its role is not to weigh the evidence but to assess the threshold issue whether a genuine issue exists as to material facts requiring a trial; (2) the ultimate standard of proof is relevant for purposes of ruling on a summary judgment, such that, when ruling on a summary judgment motion, the court must bear in mind the actual quantum and quality of proof necessary to support liability; (3) it must resolve all reasonable inferences and doubts in the nonmoving party's favor and construe all evidence in the light most favorable to the nonmoving party; and (4) it cannot decide any credibility issues. [Ortiz v. New Mexico](#), D.N.M.2021, 550 F.Supp.3d 1020. [Summary Judgment](#) 📌 80; [Summary Judgment](#) 📌 94; [Summary Judgment](#) 📌 96

In deciding whether factual dispute is genuine, on motion for summary judgment, trial court must determine whether evidence is such that reasonable jury could return verdict for nonmoving party. [Portnoy v. 440 Financial Group of Worcester, Inc.](#), D.Mass.1996, 938 F.Supp. 91. [Summary Judgment](#) 📌 46

When faithful examination of the record establishes absence of genuine issue of material fact, it is affirmative obligation of trial judge to prevent factually unsupported claims and defenses from proceeding to trial, by granting summary judgment. [Rosado v. Virginia Commonwealth University](#), E.D.Va.1996, 927 F.Supp. 917. [Summary Judgment](#) 📌 43

Function of trial court on motion for summary judgment is not to weigh evidence, but merely to determine whether there is sufficient evidence favoring nonmovant for finder of fact to return verdict in that party's favor; essentially, court performs threshold inquiry of determining whether trial is necessary. [Koch v. Shell Oil Co.](#), D.Kan.1996, 927 F.Supp. 411. [Summary Judgment](#) 📌 83; [Summary Judgment](#) 📌 96

On a motion for summary judgment, district court's inquiry is to determine whether there is a need for trial; in other words, whether there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party. [Hammers v. Aetna Life Ins. Co., D.Kan.1996, 925 F.Supp. 718. Summary Judgment 13; Summary Judgment 45\(1\)](#)

Court in considering motion for summary judgment is not required to speculate on which portion of record nonmoving party relies, nor is it obligated to wade through and search entire record for some specific facts that might support nonmoving party's claim. [Kraus v. Celotex Corp., E.D.Mo.1996, 925 F.Supp. 646. Summary Judgment 351](#)

In determining whether summary judgment is appropriate, court is to make threshold inquiry to determine whether there is need for trial--whether in other words there are any genuine factual issues that properly can be resolved only by finder of fact because they may reasonably be resolved in favor of either party. [Re/Max Intern., Inc. v. Realty One, Inc., N.D.Ohio 1996, 924 F.Supp. 1474, affirmed in part, reversed in part 173 F.3d 995, petition for certiorari filed 1999 WL 700230. Summary Judgment 45\(1\)](#)

On motion for summary judgment, district court's ultimate inquiry is to determine whether specific facts set forth by nonmoving party, coupled with undisputed background or contextual facts, are such that a rational or reasonable jury might return verdict in nonmovant's favor based on that evidence. [Shaw v. Santa Monica Bank, D.Hawai'i 1996, 920 F.Supp. 1080. Summary Judgment 93](#)

On motion for summary judgment, court is not obligated to scour record in search of factual disputes. [California Union Ins. Co. v. Liberty Mut. Ins. Co., N.D.Ill.1996, 920 F.Supp. 908, reconsideration denied 930 F.Supp. 317, amended 930 F.Supp. 320. Summary Judgment 351](#)

In reviewing motion for summary judgment, court must determine whether evidence presents sufficient disagreement to require submission to jury or whether it is so one-sided that one party must prevail as matter of law. [Miller v. City of Columbus, S.D.Ohio 1996, 920 F.Supp. 807. Summary Judgment 64; Summary Judgment 93](#)

On motion for summary judgment, district court is to inquire whether there is sufficient evidence favoring nonmoving party for jury to return verdict for the party, and to grant summary judgment where nonmovant's evidence is merely colorable, conclusory, speculative or not significantly probative. [Dumont v. Administrative Officer, S.D.N.Y.1996, 915 F.Supp. 671. Summary Judgment 83; Summary Judgment 95](#)

Any doubt as to existence of genuine issue of material fact must be resolved against party seeking summary judgment. [O'Dell v. Lamb-Grays Harbor Co., W.D.Okla.1995, 911 F.Supp. 490. Summary Judgment 75](#)

Summary judgment motion is not the chance for district court to act as jury and determine witness credibility, weigh the evidence, or decide upon competing inferences. [Masilionis v. Falley's Inc., D.Kan.1995, 904 F.Supp. 1224. Summary Judgment 94; Summary Judgment 96](#)

In making summary judgment determination, court's sole function is to determine whether there is any material dispute of fact that requires trial. [Zorn v. Helene Curtis, Inc., N.D.Ill.1995, 903 F.Supp. 1226. Summary Judgment 72](#)

On motion for summary judgment, court must inquire whether there is sufficient evidence favoring nonmoving party for jury to return verdict for that party and grant summary judgment where nonmovant's evidence is merely colorable, conclusory, speculative or not significantly probative; nonmovant must do more than simply show that there is some metaphysical doubt as to material facts. [S.E.C. v. Grossman, S.D.N.Y.1995, 887 F.Supp. 649, affirmed 101 F.3d 109. Summary Judgment 95](#)

Court reviews evidence on summary judgment under substantive law and based on evidentiary burden that party will face at trial on particular claim. [Allin v. Schuchmann, D.Kan.1995, 886 F.Supp. 793. Summary Judgment 77](#)

On motion for summary judgment, district court must determine whether evidence is such that reasonable jury could return verdict for nonmovant. [Central Pennsylvania Teamsters](#)

[Health and Welfare Fund v. Scranton Bldg. Block Co., E.D.Pa.1995, 882 F.Supp. 1542.](#)
[Summary Judgment](#) 📌 50

In deciding summary judgment motion, court must look beyond pleadings and determine whether there is genuine need for trial. [Wilson Group, Inc. v. Quorum Health Resources, Inc., D.S.C.1995, 880 F.Supp. 416.](#) [Summary Judgment](#) 📌 351

On motion for summary judgment, trial court must assess adequacy of nonmovants' response and whether that showing, on admissible evidence, would be sufficient to carry burden of proof at trial. [Thomas v. St. Luke's Health Systems, Inc., N.D.Iowa 1994, 869 F.Supp. 1413,](#) affirmed [61 F.3d 908.](#) [Summary Judgment](#) 📌 77

On motion for summary judgment, district court must determine whether evidence is such that a reasonable jury could return a verdict for nonmoving party. [Anderson v. Haverford College, E.D.Pa.1994, 868 F.Supp. 741.](#) [Summary Judgment](#) 📌 50

Summary judgment motion is not chance for court to act as jury and determine witness credibility, weigh evidence, or decide upon competing inferences. [Towle v. Flexel Corp., D.Kan.1994, 867 F.Supp. 954,](#) affirmed [68 F.3d 484.](#) [Summary Judgment](#) 📌 72; [Summary Judgment](#) 📌 96

On motion for summary judgment, threshold inquiry is whether there are any genuine factual issues that properly can be resolved only by finder of fact because they may reasonably be resolved in favor of either party. [Kube v. New Penn Motor Exp., Inc., D.N.J.1994, 865 F.Supp. 221.](#) [Summary Judgment](#) 📌 43

On motion for summary judgment, court must determine whether evidence is such that reasonable jury could return verdict for nonmoving party. [Johnston v. City of Philadelphia, E.D.Pa.1994, 863 F.Supp. 231.](#) [Summary Judgment](#) 📌 45(1)

Credibility determinations, weighing of evidence, and drawing of legitimate inferences from facts are functions of finder of fact, not functions of judge when ruling on motion for summary judgment. [Copple v. City of Concordia, Kan., D.Kan.1993, 814 F.Supp. 1529.](#) [Summary Judgment](#) 📌 74; [Summary Judgment](#) 📌 96

Function of district court in summary judgment motion is to determine whether there are genuine issues for trial while resolving all ambiguities and doubtful inferences against moving party. [Ercole v. K/S Difko XLIII Kodif XLIII A.p.S., E.D.N.Y.1992, 793 F.Supp. 61.](#) [Summary Judgment](#) 📌 41

Trial judge's role in deciding motion for summary judgment is to determine whether evidence may reasonably be resolved in favor of either party. [Commodity Futures Trading Com'n v. American Metals Exchange Corp., D.N.J.1991, 775 F.Supp. 767,](#) affirmed in part, vacated in part on other grounds [991 F.2d 71.](#) [Federal Civil Procedure](#) 📌 2546

At summary judgment stage, judge's function is to determine whether there is sufficient evidence in favor of nonmoving party for jury to return verdict for that party. [Dockerty-Bostron v. Waukesha County, E.D.Wis.1990, 744 F.Supp. 877.](#) [Summary Judgment](#) 📌 41

Summary judgment motion does not empower court to act as jury and determine witness credibility, weigh evidence, or choose between competing inferences. [Duffee By and Through Thornton v. Murray Ohio Mfg. Co., D.Kan.1995, 160 F.R.D. 602.](#) [Summary Judgment](#) 📌 94; [Summary Judgment](#) 📌 96

Magistrate judges, duty and function of court

Magistrate judge was not under any obligation to give parties notice that she was resolving factual dispute between parties on motion for summary judgment as to whether inmate previously incarcerated at facility exhausted his administrative remedies under Prison Litigation Reform Act (PLRA) and Pennsylvania Department of Corrections (DOC) manuals and policies, and she was not required to give parties opportunity to respond to her finding, in civil rights action brought pro se by inmate against correctional officer and facility manager, since magistrate judge did not state or imply that she was resolving any factual disputes between parties. [Pirl v. Sergeant, W.D.Pa.2022, 619 F.Supp.3d 531.](#) [United States Magistrate Judges](#) 📌 157

District court was under independent obligation, on appeal from Magistrate Judge's denial of reconsideration of order precluding untimely response to motion, to review pleadings and

moving papers to ensure that movants had met burden of going forward with sufficient evidence to justify entry of summary judgment, and thus would consider nonmovant's opposition papers. [Kandarge v. U.S. Dept. of Navy, D.N.J.1994, 849 F.Supp. 304. Summary Judgment 🏠 155](#)

Administrative proceedings, duty and function of court

In determining whether the Federal Election Commission's (FEC's) decision to dismiss a complaint under the Federal Election Campaign Act (FECA) was based on an impermissible interpretation of the FECA or was arbitrary, capricious, or an abuse of discretion, as required to grant summary judgment against the FEC regarding a dismissal, the court's task is not to interpret the statute as it thinks best, but rather to inquire into whether the FEC's construction was sufficiently reasonable. [Citizens for Responsibility and Ethics in Washington v. Federal Election Commission, D.D.C.2019, 380 F.Supp.3d 30, affirmed 993 F.3d 880, 451 U.S.App.D.C. 417, rehearing en banc denied 55 F.4th 918, 459 U.S.App.D.C. 312. Election Law 🏠 221; Election Law 🏠 223](#)

Due to the limited role of a court in reviewing the administrative record, the typical summary judgment standards set forth in the summary judgment rule are not applicable to a motion for summary judgment in a proceeding to determine whether an agency action is supported by the administrative record and consistent with the Administrative Procedure Act (APA) standard of review; rather, under the APA, it is the role of the agency to resolve factual issues to arrive at a decision that is supported by the administrative record, whereas the function of the district court is to determine whether or not as a matter of law the evidence in the administrative record permitted the agency to make the decision it did. [Texas Children's Hospital v. Azar, D.D.C.2018, 315 F.Supp.3d 322. Administrative Law And Procedure 🏠 1831; Administrative Law And Procedure 🏠 2004; Administrative Law And Procedure 🏠 2005](#)

Determination of existence of factual issues, duty and function of court

District court's function, in summary judgment proceeding, is not to resolve factual issues but to determine whether there exists a genuine issue of material fact, and in making its determination, court may not weigh conflicting affidavits to resolve disputed fact issues. [Warrior Tombigbee Transp. Co., Inc. v. M/V Nan Fung, C.A.11 \(Ala.\) 1983, 695 F.2d 1294. Summary Judgment 🏠 72](#)

On motion for summary judgment, function of district court is to determine whether any pertinent factual controversy exists, and, in reviewing record before it, court must give party against whom the motion is made the most favorable view of the record if there is doubt as to sufficiency of a factual showing. [Exxon Corp. v. F. T. C., C.A.D.C.1980, 663 F.2d 120, 213 U.S.App.D.C. 356. Summary Judgment 🏠 72; Summary Judgment 🏠 75](#)

In examining a motion for summary judgment, a district court must determine whether any material factual issues exist which can only be resolved through a trial. [U. S. v. Allen, C.A.9 \(Cal.\) 1978, 578 F.2d 236. See, also, Rotermund v. U.S. Steel Corp., C.A.Mo.1973, 474 F.2d 1139; National Life Ins. Co. v. Silverman, 1971, 454 F.2d 899, 147 U.S.App.D.C. 56; Kiki Undies Corp. v. Alexander's Dept. Stores, Inc., C.A.N.Y.1968, 390 F.2d 604; Employers of Wausau v. Purex Corp., D.C.Pa.1979, 476 F.Supp. 140; Mazzare v. Burroughs Corp., D.C.Pa.1979, 473 F.Supp. 234. Summary Judgment 🏠 46](#)

Summary judgment procedure is available in cases where there is no genuine issue of material fact, and whether such issue exists is a determination for the court, not the parties, and fact that parties may have thought there was no material fact in issue would be in no way controlling. [Cram v. Sun Ins. Office, Limited, C.A.4 \(S.C.\) 1967, 375 F.2d 670. Summary Judgment 🏠 45\(1\); Summary Judgment 🏠 351](#)

Under this rule, trial court had duty, upon defendant filing motion for summary judgment, to determine whether there was a genuine issue of fact in controversy, and, if so, parties were entitled to trial, and, if not, summary judgment was proper. [Christianson v. Gaines, C.A.D.C.1949, 174 F.2d 534, 85 U.S.App.D.C. 15. Summary Judgment 🏠 101](#)

In deciding, for purpose of motion for summary judgment, whether factual dispute is genuine, court must determine whether evidence is such that reasonable jury could return verdict for nonmoving party. [Bunevith v. CVS/Pharmacy, D.Mass.1996, 925 F.Supp. 89. Summary Judgment 🏠 46](#)

In deciding whether factual dispute is genuine for summary judgment purposes, federal district court must determine whether the evidence is such that reasonable jury could return verdict for nonmovant. [Stephenson v. State Street Bank & Trust Co., D.Mass.1996, 924 F.Supp. 1258. Summary Judgment 45\(1\)](#)

Responsibility of court in ruling on motion for summary judgment is to perform threshold inquiry of determining whether there is need for trial, or in other words, whether there are any genuine factual issues that properly can be resolved only by finder of fact because they may reasonably be resolved in favor of either party. [Boyles v. Petrucelli, S.D.N.Y.1996, 921 F.Supp. 1200, affirmed 104 F.3d 352. Summary Judgment 13; Summary Judgment 45\(1\)](#)

In ruling on motion for summary judgment, court is charged with function of issue finding, not issue resolution. [Point Developers, Inc. v. F.D.I.C., E.D.N.Y.1996, 921 F.Supp. 1014. Summary Judgment 72](#)

Court's responsibility on motion for summary judgment is not to resolve disputed issues of fact, but to determine whether there exist any genuine factual issues to be tried. [Parasco v. Pacific Indem. Co., E.D.Pa.1996, 920 F.Supp. 647. Summary Judgment 72](#)

In considering motion for summary judgment, motion court's function is not to resolve genuinely disputed factual questions, but merely to determine as threshold matter whether there are unresolved, genuine issues of material fact to be tried; when making this determination, all reasonable inferences and any ambiguities are drawn in favor of nonmoving party. [Bellsouth Telecommunications, Inc. v. W.R. Grace & Company-Conn., D.Conn.1994, 918 F.Supp. 533, affirmed 77 F.3d 603. Summary Judgment 72; Summary Judgment 75](#)

District court's role on motion for summary judgment is not to decide disputed issues of fact but to determine whether there is genuine issue of fact to be tried. [Dumont v. Administrative Officer, S.D.N.Y.1996, 915 F.Supp. 671. Summary Judgment 72](#)

In determining whether to grant summary judgment, court must determine whether factual dispute exists based on evidence in the record and determine, based on the substantive law at issue, whether the fact in dispute is material. [Miller v. Heller, S.D.N.Y.1996, 915 F.Supp. 651. Summary Judgment 43; Summary Judgment 47\(2\)](#)

Judge's function at summary judgment stage is not himself to weigh evidence and determine truth of matter, but to determine whether there is genuine issue for trial; there is no issue for trial unless there is sufficient evidence favoring nonmoving party for jury to return verdict for that party. [State Farm Fire and Cas. Co. v. Brewer, S.D.Miss.1996, 914 F.Supp. 140. Summary Judgment 45\(1\); Summary Judgment 83; Summary Judgment 96](#)

In determining summary judgment motion, role of court is not to weigh evidence and determine truth of matter, but to determine whether there is genuine issue for trial. [Woods Corporate Associates v. Signet Star Holdings, Inc., D.N.J.1995, 910 F.Supp. 1019. Summary Judgment 2; Summary Judgment 96](#)

District court grants summary judgment if a genuine issue of material fact does not exist and if movant is entitled to judgment as a matter of law. [Masilionis v. Falley's Inc., D.Kan.1995, 904 F.Supp. 1224. Summary Judgment 45\(2\)](#)

On a motion for summary judgment, district court must resolve all doubt as to the existence of a genuine issue of material fact against moving party, without assessing probative value of any evidence. [Capsalis v. Worch, M.D.Fla.1995, 902 F.Supp. 227.](#)

Trial court's task at summary judgment motion stage of litigation is carefully limited to discerning whether there are genuine issues of material fact to be tried, not to deciding them; its duty, in short, is confined at this point to issue-finding, and does not extend to issue resolution. [Stella Stylianou v. St. Luke's/Roosevelt Hosp. Center, S.D.N.Y.1995, 902 F.Supp. 54. Summary Judgment 72](#)

Court's inquiry on summary judgment is to determine whether there is need for trial or, in other words, whether there are any genuine factual issues that properly can be resolved only by finder of fact because they may reasonably be resolved in favor of either party.

[United Food and Commercial Workers Union Local No. 576 v. Four B Corp., D.Kan.1995, 893 F.Supp. 980, affirmed 83 F.3d 433. Summary Judgment 45\(1\)](#)

On motion for summary judgment, court must determine whether there is need for trial, i.e., whether there are any genuine factual issues that can properly be resolved in favor or either party. [Marta v. Mutual Life Ins. Co. of New York, D.Del.1995, 887 F.Supp. 722. Summary Judgment 43](#)

On motion for summary judgment, court determines if there are any genuine factual issues that properly can be resolved only by finder of fact because they may reasonably be resolved in favor of either party. [Allin v. Schuchmann, D.Kan.1995, 886 F.Supp. 793. Summary Judgment 43](#)

In ruling on motion for summary judgment, court must view evidence in light most favorable to nonmoving party to determine whether genuine issue of material fact exists. [Carver v. Dennis, M.D.Tenn.1995, 886 F.Supp. 636, affirmed 104 F.3d 847. Summary Judgment 75](#)

In determining whether to grant motion for summary judgment, court is not to weigh evidence and determine truth of matter but to determine whether there is genuine issue for trial. [Pearlstein v. Staten Island University Hosp., E.D.N.Y.1995, 886 F.Supp. 260. Summary Judgment 2; Summary Judgment 96](#)

On summary judgment motion, court cannot try issues of fact; it can only determine whether there are issues to be tried. [Southern New England Telephone Co. v. U.S., D.Conn.1995, 886 F.Supp. 211. Summary Judgment 72](#)

When presented with summary judgment motion, federal district court is not to resolve disputed issues of fact, but rather to determine whether there exist any factual issues to be tried. [Poff v. Prudential Ins. Co. of America, E.D.Pa.1995, 882 F.Supp. 1534. Summary Judgment 72](#)

If court does not dispose of entire case or grant all relief requested by party on summary judgment motion, it should, if practicable, enter order establishing which facts are uncontroverted and which are subject to genuine factual discovery. [Robinson v. Transworld Systems, Inc., N.D.N.Y.1995, 876 F.Supp. 385. Summary Judgment 63; Summary Judgment 355](#)

Judge's role in summary judgment is not to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial. [U.S. Healthcare, Inc. \(New York\) v. O'Brien, S.D.N.Y.1994, 868 F.Supp. 607. Summary Judgment 96](#)

In ruling on summary judgment motion, it is not for court to weigh evidence and determine truth of matter but to determine whether there is genuine issue for trial. [Consolidated Rail Corp. v. Primary Industries Corp., S.D.N.Y.1994, 868 F.Supp. 566. Summary Judgment 72; Summary Judgment 96](#)

On motion for summary judgment, court's function is not to resolve disputed issues of fact, but only to determine whether there is genuine issue to be tried. [Sala v. Gates Const. Corp., E.D.N.Y.1994, 868 F.Supp. 474. Summary Judgment 72](#)

On motion for summary judgment, district court is to determine whether there is a need for trial, i.e., whether, in other words, there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party. [Henry v. Gehl Corp., D.Kan.1994, 867 F.Supp. 960. Summary Judgment 72](#)

In determining whether summary judgment is appropriate, court must assess whether there are any material factual issues to be tried, while resolving ambiguities and drawing reasonable inferences against moving party. [Meek v. Oil, Chemical & Atomic Workers Intern. Union, AFL-CIO, Local 8-209, W.D.N.Y.1994, 862 F.Supp. 982, report and recommendation adopted 871 F.Supp. 166. Summary Judgment 72; Summary Judgment 75](#)

When determining summary judgment motion, court is charged with function of issue finding, not issue resolution. [Fariello v. Campbell, E.D.N.Y.1994, 860 F.Supp. 54. Summary Judgment 72](#)

In ruling on summary judgment motion, court's function is not to weigh evidence and determine truth of matter, but to determine whether there is genuine issue for trial; unless evidence exists that is sufficient to sustain jury verdict in nonmovant's favor, no genuine issue for trial exists. [Brophy v. Cincinnati, New Orleans, & Texas Pacific Ry. Co., S.D.Ohio 1994, 855 F.Supp. 213. Summary Judgment 45\(1\); Summary Judgment 96](#)

Court's function when deciding summary judgment motion is only to determine whether there is genuine issue to be tried, not to resolve disputed issues of fact. [Siegal v. Ashkinazy, E.D.N.Y.1994, 855 F.Supp. 47. Summary Judgment 72](#)

In deciding summary judgment motion district court need not resolve disputed issues of fact, but need only determine whether there is any genuine issue to be tried. [U.S. v. Rivieccio, E.D.N.Y.1994, 846 F.Supp. 1079. Summary Judgment 72](#)

On motion for summary judgment, district court's function is not to weigh evidence and determine truth of matter but to determine whether there is genuine issue for trial. [Blaguss Travel Intern. v. Musical Heritage Intern., N.D.Ill.1993, 833 F.Supp. 708. Summary Judgment 2; Summary Judgment 96](#)

Trial court's ruling on motion for summary judgment is limited to determining the existence vel non of genuine issue of material fact, and nothing more; court does not assess credibility or probative weight of evidence that establishes the existence of genuine issue of material fact. [White v. Continental General Ins. Co., D.Wyo.1993, 831 F.Supp. 1545. Summary Judgment 96](#)

Court is not to resolve disputed issues of fact when determining summary judgment motion; rather court is to determine whether factual disputes exist that are both genuine and material. [Cuccolo v. Lipsky, Goodkin & Co., S.D.N.Y.1993, 826 F.Supp. 763. Summary Judgment 72](#)

District court is empowered to determine only whether issues exist that should be tried when deciding summary judgment motion. [Midwest Payment Systems, Inc. v. Citibank Federal Sav. Bank, S.D.Ohio 1992, 801 F.Supp. 9. Summary Judgment 72](#)

On motion for summary judgment, it is for court to determine whether there are any factual disputes which are material and therefore require resolution at trial. [Taylor v. Canteen Corp., C.D.Ill.1992, 789 F.Supp. 279, affirmed in part, reversed in part 69 F.3d 773, rehearing denied. Summary Judgment 43](#)

Court's role in deciding a defendant's motion for summary judgment is not to resolve disputed factual issues, but rather to determine whether record, taken as a whole, supports any issues that require a trial. [Capital Data Corp. v. Capital Nat. Bank, S.D.N.Y.1991, 778 F.Supp. 669. See, also, Dana Corp. v. U.S., N.D.Ohio 1991, 764 F.Supp. 482; Blumensaadt v. Standard Products Co., N.D.Ohio 1989, 744 F.Supp. 160, affirmed 911 F.2d 731; E.E.O.C. v. Patrick Henry Educ. Ass'n, N.D.Ohio 1990, 741 F.Supp. 670, vacated 909 F.2d 1483; Winzeler Excavating Co. v. Brock, N.D.Ohio 1988, 694 F.Supp. 362; Noth v. Scheurer, D.C.N.Y.1968, 285 F.Supp. 81. Summary Judgment 43](#)

Credibility of witnesses, duty and function of court

On motion for summary judgment, district court could not weigh disputed evidence, decide questions of credibility, and draw inferences about knowledge and intent of parties from conflicting evidence adversely to nonmovant; such functions were exclusive functions of trier of fact to be discharged after consideration of live testimony and all other evidence presented in adversarial trial environment, at least where more than mere scintilla of evidence offered by nonmovant created dispute respecting purportedly undisputed material facts relied upon by movant, such that finder of fact would reasonably find in favor of nonmovant. [Hanover Ins. Co. v. American Engineering Co., C.A.6 \(Ky.\) 1994, 33 F.3d 727. Summary Judgment 89](#)

Judge assessing persuasiveness of evidence presented on motion for summary judgment may discount evidence as unspecific or immaterial, but not as unbelievable. [Leonard v. Dixie Well Service & Supply, Inc., C.A.5 \(La.\) 1987, 828 F.2d 291. Summary Judgment 47\(1\)](#)

In considering a motion for summary judgment, the court decides a pure question of law and is not permitted to weigh the evidence or judge the credibility of witnesses. [Neely v. St.](#)

[Paul Fire and Marine Ins. Co., C.A.9 \(Ariz.\) 1978, 584 F.2d 341. Summary Judgment 96 13](#)

In deciding motions for summary judgment in libel actions, court should not judge credibility of witnesses and draw its own inferences from evidence. [Guam Federation of Teachers, Local 1581, of Am. Federation of Teachers v. Ysrael, C.A.9 \(Guam\) 1974, 492 F.2d 438, certiorari denied 95 S.Ct. 132, 419 U.S. 872, 42 L.Ed.2d 111. Federal Civil Procedure 96 2608.1; Libel And Slander 96 123\(1\); Summary Judgment 96 96](#)

On motion for summary judgment, with no opportunity to evaluate demeanor of witnesses, it is not function of court to determine whether affiant is telling truth or that he seems persuasive. [American Mfrs. Mut. Ins. Co. v. American Broadcasting-Paramount Theatres, Inc., C.A.2 \(N.Y.\) 1967, 388 F.2d 272, on remand 45 F.R.D. 38. Summary Judgment 96 96](#)

A court is not at liberty to engage in a credibility evaluation for the purposes of a summary judgment. [Johnson Farm Equipment Co. v. Cook, C.A.8 \(Iowa\) 1956, 230 F.2d 119. Summary Judgment 96 96](#)

Although findings made by district court when ruling on motion for preliminary injunction may involve determinations of credibility, no such decision making authority is given to district court when ruling on motion for summary judgment. [DeBoer Structures \(U.S.A.\) Inc. v. Shaffer Tent And Awning Co., S.D.Ohio 2002, 233 F.Supp.2d 934. Summary Judgment 96 96](#)

In deciding motion for summary judgment, court must read all facts in light most favorable to non-moving party, and refrain from making credibility determinations. [Fernbach v. Dominick's Finer Foods, N.D.Ill.1996, 936 F.Supp. 467. Summary Judgment 96 75; Summary Judgment 96 96](#)

Summary judgment motion is not chance for court to act as jury and determine witness credibility, weigh evidence, or decide upon competing inferences. [Boyer v. Board of County Com'rs of County of Johnson County, D.Kan.1996, 922 F.Supp. 476, affirmed 108 F.3d 1388. Summary Judgment 96 94; Summary Judgment 96 96](#)

On summary judgment motion, district court may not weigh credibility of parties. [Liberti v. Walt Disney World Co., M.D.Fla.1995, 912 F.Supp. 1494. Summary Judgment 96 96](#)

Summary judgment is not the chance for court to act as jury and determine witness credibility, weigh evidence, or decide upon competing inferences. [Wilkerson v. P.I.A. Topeka, Inc., D.Kan.1995, 900 F.Supp. 1418. Summary Judgment 96 94; Summary Judgment 96 96](#)

Credibility determinations, weighing evidence, and drawing reasonable inferences are jury functions, not those of the judge deciding the motion for summary judgment. [Clay v. Interstate Nat. Corp., N.D.Ill.1995, 900 F.Supp. 981, affirmed 124 F.3d 203. Summary Judgment 96 94; Summary Judgment 96 96](#)

Assessment of credibility of witnesses is not permissible in considering motion for summary judgment. [Iowa Ham Canning, Inc. v. Handtmann, Inc., N.D.Ill.1994, 870 F.Supp. 238. Summary Judgment 96 96](#)

Credibility determinations, weighing evidence, and drawing reasonable inferences are jury functions, not those of judge deciding motion for summary judgment. [Tibbitts v. Van Den Bergh Foods Co., a Div. of Conopco, Inc., N.D.Ill.1994, 859 F.Supp. 1168. Summary Judgment 96 96](#)

On motion for summary judgment, court's function is not to make credibility determinations. [Lincoln Alameda Creek v. Cooper Industries, Inc., N.D.Cal.1992, 829 F.Supp. 325. Summary Judgment 96 96](#)

Judge's function at point of summary judgment is limited to determining whether sufficient evidence has been presented to make issue of fact proper jury question, and not to weigh evidence, judge credibility of witnesses, and determine truth of matter. [Spence v. Miles Laboratories, Inc., E.D.Tenn.1992, 810 F.Supp. 952, affirmed 37 F.3d 1185. Summary Judgment 96 96](#)

Credibility determinations, weighing of evidence, and drawing of legitimate inferences from facts are not functions of trial court when ruling on motion for summary judgment; evidence

from nonmoving party is to be believed and all justifiable inferences are to be drawn in favor of nonmovant. [Williams v. Kansas Gas and Elec. Co., D.Kan.1992, 805 F.Supp. 890.](#)

[Summary Judgment](#) 96

When judging evidence at summary judgment stage, court does not make credibility determinations or weigh conflicting evidence, and is required to draw all inferences in light most favorable to nonmoving party. [Mateo v. M/S KISO, N.D.Cal.1991, 805 F.Supp. 761.](#)

[Summary Judgment](#) 75; [Summary Judgment](#) 96

Entering of judgment, duty and function of court

Where it appears that there is no genuine issue as to any material fact upon which the outcome of the litigation depends, case is appropriate for summary judgment, and it becomes the duty of the court to render such judgment. [Whelan v. New Mexico Western Oil and Gas Company, C.A.10 \(N.M.\) 1955, 226 F.2d 156.](#) [Summary Judgment](#) 45(1)

Where there is no genuine issue as to any material fact, on which outcome of litigation depends, case is appropriate for disposition by summary judgment, which it is court's duty to enter. [Brodrick v. Gore, C.A.10 \(Kan.\) 1955, 224 F.2d 892.](#) [Summary Judgment](#) 45(1)

If it affirmatively appears from the pleadings, admissions, depositions, and affidavits, if any, that there is no genuine issue as to any material fact upon which the outcome of litigation depends, the case is appropriate for disposition by summary judgment, and it becomes the duty of the court to enter such judgment. [SMS Mfg. Co. v. U. S.-Mengel Plywoods, C.A.10 \(Okla.\) 1955, 219 F.2d 606.](#) [Summary Judgment](#) 45(1); [Summary Judgment](#) 301

A party may not rely on mere speculation or conjecture as to the true nature of the facts to overcome a motion for summary judgment; mere conclusory allegations or denials cannot by themselves create a genuine issue of material fact where none would otherwise exist. [Restaurant Law Center v. City of New York, S.D.N.Y.2019, 360 F.Supp.3d 192.](#) [Summary Judgment](#) 95

Entry of summary judgment is proper after adequate time for discovery and upon motion, against party who fails to make sufficient showing to establish existence of element essential to that party's case, and on which that party will bear burden of proof at trial.

[Tarbrake v. Sharp, E.D.Va.1995, 894 F.Supp. 270.](#) [Summary Judgment](#) 51

Summary judgment must be granted when moving party demonstrates that there is no genuine dispute as to any material fact, and that undisputed facts of record require that judgment enter, as matter of law, for movant. [RPM Pizza, Inc. v. Bank One Cambridge, E.D.Mich.1994, 869 F.Supp. 517.](#) [Summary Judgment](#) 45(2)

While summary judgment relief is drastic, it becomes duty of trial court to grant summary judgment in an appropriate case. [Becker v. Safelite Glass Corp., D.C.Kan.1965, 244 F.Supp. 625.](#) [Summary Judgment](#) 4

Where there is no genuine issue as to any material fact, it is duty of court to grant motion for summary judgment in order to save time and expense which would be required for preparation and trial of issues covered by motion. [Bond Distributing Co. v. Carling Brewing Co., D.C.Md.1963, 32 F.R.D. 409,](#) affirmed [325 F.2d 158.](#) [Summary Judgment](#) 45(1)

Delay or suspension of judgment, duty and function of court

In light of COVID-19 pandemic crisis, district court, after granting summary judgment and entering declaratory and injunctive relief on claims in putative class action that amendments to Michigan's Sex Offenders Registration Act (SORA) were null and void as to pre-2011 registrants, would suspend final judgment to allow time for the legislature to craft and enact a new statute and ensure that registrants, prosecutors' offices, and law enforcement would receive notice of the order before the injunctive relief took effect; district court would grant preliminary injunction for duration of crisis prohibiting SORA requirements. [Doe v. Snyder, E.D.Mich.2020, 612 F.Supp.3d 710.](#) [Injunction](#) 1405

Judgment as matter of law, duty and function of court

Summary judgment is appropriate only when court, viewing record as whole and in light most favorable to nonmoving party, finds no genuine issue of material fact and that moving party is entitled to judgment as matter of law. [Flowers v. Wal-Mart Stores, Inc., E.D.Va.1996, 927 F.Supp. 952.](#) [Summary Judgment](#) 45(2); [Summary Judgment](#) 75

If court resolves all factual disputes in favor of nonmoving party and still finds summary judgment in favor of moving party is correct as a matter of law, then moving party is entitled to summary judgment in his favor. [Cameron v. I.R.S., N.D.Ind.1984, 593 F.Supp. 1540](#), affirmed [773 F.2d 126](#). [Summary Judgment](#) 📌 64

It is for the court, and not the movant or the opponent of the summary judgment motion to decide whether there is an absence of any genuine issues of material fact and whether movant has a right to summary judgment as a matter of law. [Eberhardy v. General Motors Corp., M.D.Fla.1975, 404 F.Supp. 826](#). [Summary Judgment](#) 📌 45(2); [Summary Judgment](#) 📌 72

Directed verdict, duty and function of court

Even where a directed verdict would be proper after hearing the evidence, district court should not try the case in advance by summary judgment. [Ross v. Communications Satellite Corp., C.A.4 \(Md.\) 1985, 759 F.2d 355](#). [Summary Judgment](#) 📌 1

Piercing of pleadings, duty and function of court

In reaching its determination as to whether to grant a summary judgment, court has power to penetrate allegations of fact in pleadings and to look at any evidential source to determine whether there is an issue of fact to be tried. [Mintz v. Mathers Fund, Inc., C.A.7 \(Ill.\) 1972, 463 F.2d 495](#). See, also, [Kirk v. Home Indem. Co., C.A.Ill.1970, 431 F.2d 554](#); [Deakyn v. Department of Army, D.C.Del.1982, 530 F.Supp. 1322](#), affirmed in part, vacated in part on other grounds [701 F.2d 271](#), certiorari denied [104 S.Ct. 78, 464 U.S. 818, 78 L.Ed.2d 89](#). [Summary Judgment](#) 📌 304

Pleadings are to be construed liberally in favor of party against whom motion for summary judgment is made, but court may pierce pleadings, and determine from depositions, admissions and affidavits, if any, in record whether material issues of fact actually exist, and if after such scrutiny any issue as to material fact dispositive of right or duty remains, case is not ripe for disposition by summary judgment and parties are entitled to trial. [Machinery Center, Inc. v. Anchor Nat. Life Ins. Co., C.A.10 \(Utah\) 1970, 434 F.2d 1](#). [Summary Judgment](#) 📌 45(1); [Summary Judgment](#) 📌 72; [Summary Judgment](#) 📌 75; [Summary Judgment](#) 📌 301; [Summary Judgment](#) 📌 352

Pleadings are to be construed liberally in favor of party opposing motion for summary judgment, but court may pierce the pleadings and determine from the depositions, admissions, and affidavits, if any, whether material issues of fact actually exist. [Smoot v. Chicago, R. I. & P. R. Co., C.A.10 \(Okla.\) 1967, 378 F.2d 879](#). See, also, [Ando v. Great Western Sugar Co., C.A.Wyo.1973, 475 F.2d 531](#). [Summary Judgment](#) 📌 72; [Summary Judgment](#) 📌 75

On a motion for summary judgment, pleadings are to be construed liberally in favor of party against whom the motion is made, but the court may pierce the pleadings, and determine from the depositions, admissions and affidavits, if any, whether material issues of fact actually exist, and if, after such scrutiny, a material issue of fact remains case is not ripe for summary judgment and the parties are entitled to a trial. [Bushman Const. Co. v. Conner, C.A.10 \(Colo.\) 1962, 307 F.2d 888](#). [Summary Judgment](#) 📌 45(1); [Summary Judgment](#) 📌 72; [Summary Judgment](#) 📌 75; [Summary Judgment](#) 📌 352

On consideration of a motion for summary judgment, a court may pierce the formal pleadings to determine whether depositions and affidavits or other relevant documents submitted as evidence raise any triable factual issue. [McCollar v. Euler, C.A.10 \(N.M.\) 1960, 286 F.2d 327](#). [Summary Judgment](#) 📌 58

It is function of summary judgment to pierce formal allegations of facts in pleading and to determine whether further exploration of facts is necessary. [Smith v. Maloney, D.Mass.1990, 735 F.Supp. 39](#). [Summary Judgment](#) 📌 2

Resolution of factual disputes, duty and function of court

On motion for summary judgment, trial court must not decide any factual issues it finds in the records; if factual issues are present, court must deny the motion and proceed to trial. [Warrior Tombigbee Transp. Co., Inc. v. M/V Nan Fung, C.A.11 \(Ala.\) 1983, 695 F.2d 1294](#). [Summary Judgment](#) 📌 72

Court's function on motion for summary judgment is not to try disputed issues of fact, but only to ascertain whether such issue is present, and any doubt on source is to be resolved

against movant. [Abraham v. Graphic Arts Intern. Union, C.A.D.C.1981, 660 F.2d 811, 212 U.S.App.D.C. 412. Summary Judgment 72; Summary Judgment 75](#)

District court may not make findings of disputed facts on motion for summary judgment. [Watkins v. Northwestern Ohio Tractor Pullers Ass'n, Inc., C.A.6 \(Ohio\) 1980, 630 F.2d 1155, 208 U.S.P.Q. 545. See, also, Scharf v. U.S. Atty. Gen., C.A.Cal.1979, 597 F.2d 1240; Paton v. LaPrade, C.A.N.J.1975, 524 F.2d 862; Rodway v. U.S. Dept. of Agriculture, 1973, 482 F.2d 722, 157 U.S.App.D.C. 133, on remand 369 F.Supp. 1094. Summary Judgment 355](#)

A court may not resolve disputed issues of fact in ruling on a summary judgment motion; if a question of fact remains, the motion for summary judgment should be denied and the case should proceed to trial. [Felix v. Young, C.A.6 \(Mich.\) 1976, 536 F.2d 1126. Summary Judgment 351](#)

Responsibility of district judge on a motion for summary judgment is merely to determine that there are issues to be tried, rather than to try the issues himself via affidavits. [Jaroslawicz v. Seedman, C.A.2 \(N.Y.\) 1975, 528 F.2d 727.](#)

On motion for summary judgment, court's function is not to resolve any issue of material fact but only to ascertain whether any such issue exists and all doubts in that regard must be resolved against summary judgment. [Bouchard v. Washington, C.A.D.C.1975, 514 F.2d 824, 168 U.S.App.D.C. 402. Summary Judgment 72; Summary Judgment 75](#)

On a motion for summary judgment the role of the district court is limited, since it does not try the factual issues but must determine instead whether there are any such issues to be tried. [Soria v. Oxnard School Dist. Bd. of Trustees, C.A.9 \(Cal.\) 1973, 488 F.2d 579, certiorari denied 94 S.Ct. 1961, 416 U.S. 951, 40 L.Ed.2d 301, on remand 386 F.Supp. 539. Summary Judgment 72](#)

Function of court on a summary judgment motion is limited to ascertaining whether any factual issue pertinent to the controversy exists; it does not extend to resolution of any such issue. [Weiss v. Kay Jewelry Stores, Inc., C.A.D.C.1972, 470 F.2d 1259, 152 U.S.App.D.C. 350. Summary Judgment 72](#)

Resolving of conflicts and ambiguities in a witness' testimony is not a function of the court to be performed through medium of summary judgments. [Coe v. Riley, C.C.A.5 \(Fla.\) 1947, 160 F.2d 538. Summary Judgment 96](#)

Court in ruling on summary judgment motion is not to resolve factual issues, but may only determine whether factual issues exist, and must resolve all ambiguities and draw all justifiable inferences in favor of non-moving party. [Bashir v. National R.R. Passenger Corp. \(Amtrak\), S.D.Fla.1996, 929 F.Supp. 404, affirmed 119 F.3d 929. Summary Judgment 72; Summary Judgment 75](#)

Searching of record, duty and function of court

District court did not abuse its discretion on insurer's motion for summary judgment by refusing according to its local anti-ferret rule to sift through voluminous exhibits in order to match assertions in defendant's brief to particular portions of those exhibits, even if defendant's references to supporting documentation were fairly straightforward until filing using court's electronic filing system which made citations in defendant's brief incorrect because he had cited to exhibits as he arranged them prior to e-filing them and without taking into account how e-filing system would change exhibit designations. [Certain Underwriters At Lloyd's London v. Garmin Intern., Inc., C.A.10 \(Kan.\) 2015, 781 F.3d 1226. Summary Judgment 290](#)

Even assuming that district court had some duty to consider affidavit and exhibits submitted by nonmoving party after summary judgment was entered against it, district court did not abuse its discretion in refusing to consider affidavit and exhibits; district judge was left with task of paging through 25-page affidavit and 117 pages of attached exhibits in search of evidence that could preclude summary judgment. [Cray Communications, Inc. v. Novatel Computer Systems, Inc., C.A.4 \(Md.\) 1994, 33 F.3d 390, certiorari denied 115 S.Ct. 1254, 513 U.S. 1191, 131 L.Ed.2d 135. Summary Judgment 308; Summary Judgment 310](#)

In determining that no issues of material fact exist, court may not rely solely on fact that opposing parties have made cross motions for summary judgment but must examine record

itself to determine whether material issues of fact exist. [Standard Oil Co. v. Department of Energy](#), Em.App.1978, 596 F.2d 1029. [Summary Judgment](#) 📌 279

Where new trial was granted after jury brought in verdict for plaintiff in employment discrimination proceeding, and defendants thereafter filed motion for summary judgment, trial court was not required to search record of previous trial for factual dispute, and summary judgment was properly granted against plaintiff where she failed to draw court's attention to particular testimony or portions of record that supported her contention that summary judgment was inappropriate. [Downes v. Beach](#), C.A.10 (Colo.) 1978, 587 F.2d 469. [Summary Judgment](#) 📌 304

On motion for summary judgment, trial court does not try issues of fact; rather, examining the entire record, it first decides the limited question of whether any factual issue exists. [Radobenko v. Automated Equipment Corp.](#), C.A.9 (Ariz.) 1975, 520 F.2d 540. [Summary Judgment](#) 📌 72

On a motion for summary judgment, a district court is not required to speculate on which portion of the record the nonmoving party relies, nor is it obligated to wade through and search the entire record for some specific facts that might support the nonmoving party's claim. [Brown v. Ohio State University](#), S.D. Ohio 2009, 616 F.Supp.2d 740, affirmed 385 Fed.Appx. 486, 2010 WL 2777060. [Summary Judgment](#) 📌 351

Where a nonmoving party fails to adequately respond to a motion for summary judgment, a district court has no duty to perform an independent review of the record to find proof of a factual dispute, even if that nonmoving party is proceeding pro se. [Cusamano v. Sobek](#), N.D.N.Y.2009, 604 F.Supp.2d 416. [Summary Judgment](#) 📌 282; [Summary Judgment](#) 📌 291; [Summary Judgment](#) 📌 351

District court has no duty to perform an independent review of record to look for factual dispute on motion for summary judgment even if non-movant is proceeding pro se. [Jackson v. Onondaga County](#), N.D.N.Y.2008, 549 F.Supp.2d 204. [Summary Judgment](#) 📌 291; [Summary Judgment](#) 📌 351

District court was not obligated to scour summary judgment record in search of genuine issue of triable fact, in development company's third-party Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) action against former owner and developer of subdivision, which was located within boundaries of Eureka Mine Superfund Site, seeking contribution from owner for equitable share of response costs incurred by Environmental Protection Agency (EPA) in removing arsenic from Site, where owner's opposition to company's motion for summary judgment was devoid of any citations whatsoever, and owner neither reproduced company's statement of undisputed facts, nor specifically addressed any of the facts included within, as required by procedural rules. [U.S. v. Honeywell Intern., Inc.](#), E.D.Cal.2008, 542 F.Supp.2d 1188. [Summary Judgment](#) 📌 351

The federal rule of civil procedure governing a motion for summary judgment does not impose an obligation on a district court to perform an independent review of the record to find proof of a factual dispute. [Ryder v. Washington Mut. Bank, F.A.](#), D.Conn.2007, 501 F.Supp.2d 311. [Summary Judgment](#) 📌 351

The local summary judgment rule, under which the district court has no independent duty to search or consider any part of the record not specifically referenced in the parties' statements of material fact, was designed to halt the former summary judgment practice of submitting a voluminous record and leaving to the court the duty to comb the record in search of material facts. [Ricci v. Applebee's Northeast, Inc.](#), D.Me.2003, 297 F.Supp.2d 311, clarified 301 F.Supp.2d 51. [Summary Judgment](#) 📌 351

Evidentiary hearings, duty and function of court

In a prisoner civil rights case involving the defense of failure to exhaust administrative remedies as required by the Prison Litigation Reform Act (PLRA), if the plaintiff, in opposing summary judgment, establishes a disputed issue of material fact, but the district court declines to conduct an evidentiary hearing, it should explain why such a hearing is unnecessary; however, if neither party requests an evidentiary hearing, a district court is not obligated to raise the topic sua sponte. [Estrada v. Smart](#), C.A.10 (Colo.) 2024, 107 F.4th 1254. [Summary Judgment](#) 📌 341; [Summary Judgment](#) 📌 355

Sua sponte determination, duty and function of court--Generally

Given potential unfairness of entry of summary judgment sua sponte, district court may summarily decide claim on its own initiative only if: (1) discovery is sufficiently advanced so that parties have enjoyed reasonable opportunity to glean material facts, and (2) court gives targeted party appropriate notice and a chance in accordance with the rules to present its evidence on essential elements of claim or defense. [Wells Real Estate Inv. Trust II, Inc. v. Chardon/Hato Rey Partnership, S.E., C.A.1 \(Puerto Rico\) 2010, 615 F.3d 45. Summary Judgment](#) 🗝️ 280

Entry of summary judgment sua sponte on court's own motion is inappropriate when it takes party by surprise. [Goldstein v. Fidelity and Guar. Ins. Underwriters, Inc., C.A.7 \(Ill.\) 1996, 86 F.3d 749. Summary Judgment](#) 🗝️ 280

In certain limited circumstances, federal district court can enter summary judgment sua sponte; the most obvious example is federal district court's decision to turn motion to dismiss into motion for summary judgment by turning to materials outside the pleadings. [Employers Ins. of Wausau v. Petroleum Specialties, Inc., C.A.6 \(Mich.\) 1995, 69 F.3d 98. Summary Judgment](#) 🗝️ 280

Trial court is not authorized to enter arbitrary summary judgment sua sponte against a party; without a party-generated motion for summary judgment or dismissal motion which may be treated as a motion for summary judgment, district court normally lacks power to enter summary judgment. [Choudhry v. Jenkins, C.A.7 \(Ind.\) 1977, 559 F.2d 1085, certiorari denied 98 S.Ct. 634, 434 U.S. 997, 54 L.Ed.2d 491. Summary Judgment](#) 🗝️ 280

Even where a defendant has not advanced a failure-to-state-a-claim argument on a motion for summary judgment, a district court may, sua sponte, address whether a plaintiff has failed to state a claim upon which relief may be granted. [Wade v. Tiffin Motorhomes, Inc., N.D.N.Y.2009, 686 F.Supp.2d 174. Federal Civil Procedure](#) 🗝️ 1824

Summary judgment can be granted sua sponte if there is no genuine issue of material fact in dispute after studying the parties' evidentiary proffers and giving the benefit of reasonable doubt to those against whom the motion is directed, and the prevailing party is entitled to judgment as a matter of law. [Gonzalez-Gonzalez v. U.S., D.Puerto Rico 2008, 581 F.Supp.2d 272. Summary Judgment](#) 🗝️ 45(2); [Summary Judgment](#) 🗝️ 280

In rare circumstances, summary judgment can be granted sua sponte, provided that discovery is sufficiently advanced for the court to determine the existence of issues of material fact adequately, and that the target has sufficient notice, at least ten days, to present all evidence on the essential elements of its claim or defense. [Gonzalez-Gonzalez v. U.S., D.Puerto Rico 2008, 581 F.Supp.2d 272. Summary Judgment](#) 🗝️ 280

Where a defendant has not advanced a failure-to-state-a-claim argument on a motion for summary judgment that is based entirely on allegations of complaint, a district court may, sua sponte, address whether a pro se prisoner has failed to state a claim upon which relief may be granted. [Jackson v. Onondaga County, N.D.N.Y.2008, 549 F.Supp.2d 204. Costs, Fees, And Sanctions](#) 🗝️ 524(2); [Federal Civil Procedure](#) 🗝️ 1824

A district court may grant summary judgment sua sponte, as long as at least one party has moved for summary judgment. [Command Cinema Corp. v. VCA Labs, Inc., S.D.N.Y.2006, 464 F.Supp.2d 191. Summary Judgment](#) 🗝️ 280

Where it appears clearly upon the record that all of the evidentiary materials that a party might submit in response to a motion for summary judgment are before the court, a sua sponte grant of summary judgment against that party may be appropriate if those materials show that no material dispute of fact exists and that the other party is entitled to judgment as a matter of law. [MSF Holding Ltd. v. Fiduciary Trust Co. Intern., S.D.N.Y.2006, 435 F.Supp.2d 285, affirmed on other grounds 235 Fed.Appx. 827, 2007 WL 1655636. Summary Judgment](#) 🗝️ 280

On plaintiff's motion for summary judgment, court has power to grant summary judgment in defendant's favor sua sponte, even though defendant has not cross-moved for summary judgment. [Martinson v. Massachusetts Bay Ins. Co., S.D.N.Y.1996, 947 F.Supp. 124. Summary Judgment](#) 🗝️ 280

Question of whether summary judgment is appropriate on claim because it is time barred may be considered by court sua sponte. [Campbell v. Machias Sav. Bank, D.Me.1994, 865](#)

[F.Supp. 26. Summary Judgment](#) 📌 280

District court has power to grant summary judgment sua sponte or on its own initiative provided that discovery is sufficiently advanced to permit court to make accurate determination whether genuine material fact exists and party against whom summary judgment is entered is on notice to bring forth all of its evidence and essential elements of critical claim or defense. [Benito-Hernando v. Gavilanes, D.Puerto Rico 1994, 849 F.Supp. 136. Summary Judgment](#) 📌 280

District court is prohibited from granting summary judgment sua sponte. [Carlock v. Pillsbury Co., D.Minn.1989, 719 F.Supp. 791. Summary Judgment](#) 📌 280

---- **Notice, sua sponte determination, duty and function of court**

District court provided adequate notice that it would sua sponte reach claim of content or viewpoint discrimination on summary judgment in property owner's [§ 1983](#) action alleging that town's application of its storage container ordinance violated his First Amendment free speech rights; district judge reminded parties at summary judgment motion hearing that claim had survived judgment on pleadings, and that "I don't want anyone here saying you're not arguing viewpoint because I foreclosed it[,] because I did not foreclose it. ... [T]his is the whole case we're talking about as far as I'm concerned," owner's attorney expressed no misgivings about this statement during hearing, and he neither sought continuance nor asked for opportunity to file supplemental affidavits and/or briefs. [McCoy v. Town of Pittsfield, NH, C.A.1 \(N.H.\) 2023, 59 F.4th 497. Summary Judgment](#) 📌 280; [Summary Judgment](#) 📌 292

District court's procedural error in sua sponte granting summary judgment to pipeline company on landowners' claim for trespass damages without providing proper notice or an opportunity to be heard required reversal; while pipeline company's motions in limine sought to exclude large swaths of the landowners' evidence of trespass damages, company did not clearly seek to exclude all evidence of trespass damages, nor to limit recovery of trespass damages to only a nominal amount, and thus landowners lacked any notice that they needed to come forward with all evidence of their purported trespass damages or face an adverse judgment, and landowners contended that they possess additional evidence relevant to trespass damages that was not directly challenged in the motions. [Moore v. Equitrans, L.P., C.A.4 \(W.Va.\) 2022, 27 F.4th 211, on remand 2022 WL 16707191. Federal Courts](#) 📌 3705(3)

District court was precluded from sua sponte granting summary judgment to prison's private medical provider in prisoner's [§ 1983](#) Eighth Amendment action alleging deliberate indifference to prisoner's serious medical needs of chronic back pain, where court did not give notice of its intent to grant summary judgment for provider before it did so. [Gabb v. Wexford Health Sources, Inc., C.A.7 \(Ill.\) 2019, 945 F.3d 1027. Summary Judgment](#) 📌 280

District court impermissibly granted summary judgment, sua sponte, in city's favor on arrestee's state law negligence claim, without giving arrestee adequate notice and opportunity to oppose, where case had been narrowed down to arrestee's [§ 1983](#) claim on theory that city's internal affairs system was inadequate and provided no accountability, and his state law negligent supervision claim, district court remarked, at motion in limine phase, that the failure to supervise claim was the only claim left in the case, arrestee's state law negligence claim was absent from portion of jury instructions that set forth what jury was to consider, and, prior to its sua sponte grant, district court stated that arrestee's state law negligent supervision claim would be tried, and thus, at time of remark, arrestee had no reason to believe that the claim was at risk of adverse summary judgment ruling. [Forrest v. Parry, C.A.3 \(N.J.\) 2019, 930 F.3d 93, certiorari denied 140 S.Ct. 902, 205 L.Ed.2d 465. Summary Judgment](#) 📌 280

District court could not grant summary judgment sua sponte on state prisoner's substantive due process claim without adequate notice. [Proctor v. LeClaire, C.A.2 \(N.Y.\) 2017, 846 F.3d 597, on remand 2017 WL 3396538. Summary Judgment](#) 📌 280

Discount clothing and apparel chain was given adequate notice that district court was considering whether a contract was actually formed for apparel chain to pay marketing company's actual costs of services provided to apparel company prior to termination of their master services agreement for marketing and advertising services, and thus court did not err in sua sponte granting summary judgment to marketing company on issue of whether

such contract was formed, despite fact that marketing company did not make any motion for such relief, where apparel chain had raised the actual-costs contract-formation issue in its own motion for summary judgment and presented its evidence at that time. [Barkley, Inc. v. Gabriel Brothers, Inc., C.A.8 \(Mo.\) 2016, 829 F.3d 1030. Summary Judgment](#) 🏷️ 280

District court could not grant, sua sponte, summary judgment to vendor, in action to recover escrow deposit after diesel fuel spill occurred in property prior to its ownership transfer, where court failed to give purchaser sufficient notice of its intent to grant summary judgment on merits, failed to provide purchaser an opportunity to oppose, and purchaser was prejudiced by lack of notice; court gave purchaser no notice that it would decide not only the contract interpretation issue of whether a reasonable estimate of repair costs was limited to physical repairs, but also the issue of whether a reasonable estimate of repairs to physical property alone exceeded \$4 million, and purchaser would have presented evidence on repair costs had it been notified. [Wells Real Estate Inv. Trust II, Inc. v. Chardon/Hato Rey Partnership, S.E., C.A.1 \(Puerto Rico\) 2010, 615 F.3d 45. Summary Judgment](#) 🏷️ 280

It was appropriate for district court to sua sponte determine whether town deputy supervisor, town commissioner of planning and development, and town code enforcement inspector were entitled to summary judgment on Black homeowners' claim for violation of Fair Housing Act (FHA) arising from enforcement of town zoning code; homeowners were on notice as to potential defects in their FHA claim but failed to respond to defendants arguments or address FHA claim at all in their papers, discovery was closed and remained closed despite multiple efforts to reopen, defendants' motion for summary judgment was broad and covered all of homeowners' claims, and homeowners' opposition was similarly broad and attached more than 500 pages of materials to support their argument that summary judgment should not be granted. [Thomas v. Genova, E.D.N.Y.2023, 698 F.Supp.3d 493. Summary Judgment](#) 🏷️ 111; [Summary Judgment](#) 🏷️ 280

Adequate notice was given to insurer prior to sua sponte grant of summary judgment in insured's favor in insurer's action seeking declaratory judgment that it had no duty to defend insured in underlying action, even though district court did not provide insurer any formal notice of its intent to do so, where district court had denied insurer's motion for summary judgment, insured had filed motion for clarification as to what genuine issues of material fact remained, insurer was given sufficient opportunity to respond, there was complete evidentiary record, and matter presented only legal question. [Addison Insurance Company v. 4000 Island Boulevard Condominium Association, Inc., S.D.Fla.2016, 263 F.Supp.3d 1266, affirmed 721 Fed.Appx. 847, 2017 WL 6616690. Summary Judgment](#) 🏷️ 280

District courts possess the power to enter summary judgment sua sponte, so long as the opposing party was on notice that she had to come forward with all of her evidence. [Dudley's Commercial and Industrial Coating, Inc. v. U.S., I.R.S., C.I.R., M.D.Tenn.2003, 292 F.Supp.2d 976. Summary Judgment](#) 🏷️ 280

District court has power to grant summary judgment sua sponte where neither party has moved for such relief, provided that all parties are given advance notice that court plans on converting motion to dismiss to motion for summary judgment. [Brewton v. Hollister, W.D.N.Y.1996, 948 F.Supp. 244. Summary Judgment](#) 🏷️ 280

Notice required for district court to enter summary judgment sua sponte consists of providing adequate opportunity to demonstrate why summary judgment should not be granted to party against whom judgment is entered. [Wilkicki v. Brady, D.R.I.1995, 882 F.Supp. 1227. Summary Judgment](#) 🏷️ 280

Bankruptcy court could sua sponte enter summary judgment for nonmoving party, where the bankruptcy court notified debtor-movant that it intended to resolve the issue of whether judgment creditor's temporary protective order and writ of attachment should be set aside, which could potentially result in a grant of summary judgment in favor of judgment creditor, and debtor had a reasonable opportunity to respond. [Otte v. Naviscent, LLC, N.D.Cal.2021, 624 B.R. 883. Bankruptcy](#) 🏷️ 2164.1

"Reasonable notice," as must be given before a court may grant a motion for summary judgment sua sponte on grounds not raised by the moving party but apparent in the record, implies adequate time to develop the facts on which the litigant will depend to oppose summary judgment, and it also requires that a party have a full and fair opportunity to draw

the court's attention to facts and authority in support of its position. [In re Ortiz](#), C.D.Cal.2009, 400 B.R. 755. [Bankruptcy](#) 📌 2164.1

---- Cross motion, sua sponte determination, duty and function of court

When faced with cross-motions for summary judgment, a district court is not required to grant judgment as a matter of law for one side or the other; rather, the court must evaluate each party's motion on its own merits, taking care in each instance to draw all reasonable inferences against the party whose motion is under consideration. [Sedona Corp. v. Open Solutions, Inc.](#), D.Conn.2009, 646 F.Supp.2d 262. [Summary Judgment](#) 📌 279

Upon filing of cross-motions for partial summary judgment or summary judgment, the motions must be evaluated in accordance with the claim or defense which is the subject of the motion and in accordance with the burden of proof allocated to each party. [E.piphany, Inc. v. St. Paul Fire & Marine Ins. Co.](#), N.D.Cal.2008, 590 F.Supp.2d 1244, leave to file for reconsideration denied 686 F.Supp.2d 1005. [Summary Judgment](#) 📌 279

When facing cross-motions for summary judgment, a district court must rule on each motion independently, deciding in each instance whether the moving party has met its burden of showing that a genuine issue of material fact is in dispute to defeat summary judgment. [Ferguson v. General Star Indem. Co.](#), D.Mass.2008, 582 F.Supp.2d 91. [Summary Judgment](#) 📌 279

When facing cross motions for summary judgment, court must rule on each motion independently, deciding in each instance whether moving party has met requirements for granting relief. [Dan Barclay, Inc. v. Stewart & Stevenson Services, Inc.](#), D.Mass.1991, 761 F.Supp. 194. [Summary Judgment](#) 📌 72

Filing of cross motions for summary judgment does not require court to grant summary judgment for either party. [Beattie v. D.M. Collections, Inc.](#), D.Del.1991, 754 F.Supp. 383. [Summary Judgment](#) 📌 279

Standard for cross motions for summary judgments is same as for individual motions for summary judgment; court handles cross motions as if they were two distinct, independent motions, and thus in evaluating each motion, court must consider facts and inferences in light most favorable to nonmoving party. [Arnold Pontiac-GMC, Inc. v. General Motors Corp.](#), W.D.Pa.1988, 700 F.Supp. 838. [Summary Judgment](#) 📌 75

Where one party has invoked power of court to render summary judgment against adversary, civil rules give court power to render summary judgment for adversary if it is clear that case warrants that result, although adversary has not filed cross motion for summary judgment. [Peiffer v. Lebanon School Dist.](#), M.D.Pa.1987, 673 F.Supp. 147, affirmed 848 F.2d 44. [Summary Judgment](#) 📌 279

Where one party has invoked power of court to render summary judgment against adversary, this rule and [rule 54](#) of these rules give court power to render summary judgment for adversary if it is clear that case warrants such result, even though adversary has not filed cross motion for summary judgment. [Nebraska Health Care Ass'n, Inc. v. Dunning](#), D.Neb.1983, 575 F.Supp. 176. [Summary Judgment](#) 📌 279

When plaintiff moves for summary judgment, defendant does not serve and file cross motion for summary judgment, and record developed on plaintiff's motion reveals that defendant is entitled to judgment, court enjoys discretion to grant summary judgment to nonmoving defendant; his course may be followed only if great care is taken to insure that moving party is afforded adequate opportunity to show that there is genuine issue as to one or more material facts necessary to vindication of legal theory relied upon by nonmoving party. [Mason v. Melendez](#), W.D.Wis.1981, 525 F.Supp. 270. [Summary Judgment](#) 📌 341

Although defendants did not make a formal cross motion for summary judgment, the district court was empowered to search the record and, if warranted, grant summary judgment in defendants' favor. [Brandon v. Board of Ed. of Guilderland Central School Dist.](#), N.D.N.Y.1980, 487 F.Supp. 1219, affirmed 635 F.2d 971, certiorari denied 102 S.Ct. 970, 454 U.S. 1123, 71 L.Ed.2d 109, rehearing denied 102 S.Ct. 1493, 455 U.S. 983, 71 L.Ed.2d 694. [Summary Judgment](#) 📌 279

A cross motion for summary judgment is not a prerequisite to the entry of a judgment for a nonmoving party. [Jenkins v. U. S. Civil Service Commission](#), D.C.D.C.1978, 460 F.Supp.

611. See, also, *Yacovone v. Bailar*, D.C.D.C.1978, 455 F.Supp. 287; *Moss v. Ward*, D.C.N.Y.1978, 450 F.Supp. 591; *Bowman v. U.S. Bd. of Parole*, D.C.Wis.1976, 411 F.Supp. 329; *State Farm Mut. Auto. Ins. Co. v. Clark*, D.C.Alaska 1975, 397 F.Supp. 745; *Watkins Motor Lines, Inc. v. Zero Refrigerated Lines*, D.C.Ill.1974, 381 F.Supp. 363, affirmed 525 F.2d 538, certiorari denied 96 S.Ct. 1727, 425 U.S. 952, 48 L.Ed.2d 195; *Harcourt, Brace & World, Inc. v. Graphic Controls Corp.*, D.C.N.Y.1971, 329 F.Supp. 517; *Walters v. Dunlap*, D.C.Pa.1966, 250 F.Supp. 76, affirmed 368 F.2d 118; *Boeing Co. v. International Union, United Auto., Aerospace and Agr. Implement Workers of America (UAW, AFL-CIO)*, D.C.Pa.1964, 234 F.Supp. 404; *Ruby v. American Airlines, Inc.*, D.C.N.Y.1963, 227 F.Supp. 702, affirmed 323 F.2d 248, certiorari denied 84 S.Ct. 658, 376 U.S. 913, 11 L.Ed.2d 611. Summary Judgment 🏠 279

Summary judgment may be granted in favor of the party against whom motion for summary judgment is made without formality of that party making a motion if that party is entitled to summary judgment. *Case v. International Broth. of Elec. Workers Local Union Number 1547*, D.C.Alaska 1977, 438 F.Supp. 856, affirmed 587 F.2d 1379, certiorari denied 99 S.Ct. 2890, 442 U.S. 944, 61 L.Ed.2d 315, rehearing denied 100 S.Ct. 192, 444 U.S. 889, 62 L.Ed.2d 124. Summary Judgment 🏠 280

Where applicable law dictated in favor of cross defendant, it was appropriate that summary judgment be entered in favor of him, despite fact that he had filed no motion to that effect. *Perry v. Lockert*, M.D.Tenn.1976, 414 F.Supp. 169. Summary Judgment 🏠 280

--- Against moving party, sua sponte determination, duty and function of court

Sua sponte grant of summary judgment was not warranted in favor of natural gas seller on its claim against buyer for tortious interference with future contractual relationship, even though buyer had filed motion for summary judgment on issue, where claim involved fact-bound determination that required district court to weigh various competing considerations, seller had ultimate burden of persuasion on claim, and buyer had additional evidence to rebut claim that it was not permitted to introduce. *DL Resources, Inc. v. FirstEnergy Solutions Corp.*, C.A.3 (Pa.) 2007, 506 F.3d 209. Summary Judgment 🏠 280

District court did not err in acting sua sponte to enter summary judgment against movant where no genuine issues of material fact existed, as movant conceded in filing motion for summary judgment in its favor. *Goldstein v. Fidelity and Guar. Ins. Underwriters, Inc.*, C.A.7 (Ill.) 1996, 86 F.3d 749. Summary Judgment 🏠 280

Court has power to grant summary judgment for non-moving party even without cross-motion as long as great care is exercised to assure that original movant has had adequate opportunity to show that there is genuine issue and that his opponent is not entitled to judgment as matter of law. *Andrews v. DuBois*, D.Mass.1995, 888 F.Supp. 213. Summary Judgment 🏠 280

When one party to civil action moves for summary judgment, district court may grant summary judgment against movant, even though opposite party has not actually filed motion for summary judgment. *Bur-Cold Exp., Inc. v. Parker Hannifin Corp.*, S.D.Tex.1992, 808 F.Supp. 553. Summary Judgment 🏠 280

Court can grant summary judgment against movant, even though opposite party has not actually filed motion for summary judgment. *Gerber v. Longboat Harbour North Condominium, Inc.*, M.D.Fla.1991, 757 F.Supp. 1339. Summary Judgment 🏠 280

The trial court has power on its own motion to enter summary judgment against the party who originally moved for summary judgment. *Doe v. U.S. Civil Service Commission*, S.D.N.Y.1980, 483 F.Supp. 539. Summary Judgment 🏠 280

--- For nonmoving party, sua sponte determination, duty and function of court

District court maintains discretion to grant nonmoving party summary judgment, even where nonmovant does not file cross-motion for summary judgment. *Acton v. City of Columbia, Mo.*, C.A.8 (Mo.) 2006, 436 F.3d 969, rehearing and rehearing en banc denied. Summary Judgment 🏠 280

Sua sponte award by court of summary judgment to nonmoving party is permissible where it appears from papers, affidavits and other proofs submitted by parties that there is no disputed issue of material fact and that judgment for nonmoving party would be appropriate

as matter of law. [Lowenschuss v. Kane, C.A.2 \(N.Y.\) 1975, 520 F.2d 255](#), on remand [72 F.R.D. 498. Summary Judgment](#) 📌 45(2)

On strip club operator's motion for summary judgment in action challenging on constitutional grounds county ordinance regulating exotic entertainment, district court, acting sua sponte, would grant summary judgment to nonmovant county commissioners; no disputed issues of material fact remained after discovery, and operator, having raised the constitutional issues and fully briefed them, had a full and fair opportunity to present all of its evidence to district court. [Pancakes, Biscuits and More, LLC v. Pendleton County Com'n, N.D.W.Va.2014, 996 F.Supp.2d 438. Summary Judgment](#) 📌 111; [Summary Judgment](#) 📌 280

District court would sua sponte enter summary judgment for lessor, on lessee's counterclaim for equitable extension of oil and gas lease, although only lessee moved for summary judgment; resolution of claim did not require further factual development, lessee was not prejudiced as it was party that brought motion, and by denying judgment on counterclaim, there was nothing left to adjudicate since lessee had also obtained summary judgment on lessor's only claim against it, and summary judgment on counterclaim was based on purely legal issue whether lessor repudiated lease by initiating action. [Harrison v. Cabot Oil and Gas Corp., M.D.Pa.2012, 887 F.Supp.2d 588](#), affirmed [608 Fed.Appx. 128, 2015 WL 3895209. Summary Judgment](#) 📌 203; [Summary Judgment](#) 📌 280

Where one party has invoked the power of the court to render a summary judgment against an adversary, rules of civil procedure governing granting relief to which a party is entitled and summary judgment, when read together, give the court the power to render a summary judgment sua sponte for the adversary if it is clear that the case warrants that result, even though the adversary has not filed a cross-motion for summary judgment. [Talecris Biotherapeutics, Inc. v. Baxter Intern. Inc., D.Del.2007, 510 F.Supp.2d 356. Summary Judgment](#) 📌 280

A court may grant summary judgment to a non-moving party, provided that party has had a full and fair opportunity to meet the proposition that there is no genuine issue of material fact to be tried. [Command Cinema Corp. v. VCA Labs, Inc., S.D.N.Y.2006, 464 F.Supp.2d 191. Summary Judgment](#) 📌 280

Trial court could sua sponte grant summary judgment to party not moving for that relief, when there was properly noticed motion for summary judgment made by losing party, losing party addressed issues upon which court based decision, and losing party acknowledged that there were no genuine issues of material fact preventing summary judgment resolution. [What-A-Burger of Virginia, Inc. v. Whataburger Inc., of Corpus Christi, Tex., E.D.Va.2003, 256 F.Supp.2d 476](#), affirmed in part, reversed in part and remanded [357 F.3d 441, 69 U.S.P.Q.2d 1829](#), on remand [300 F.Supp.2d 407. Summary Judgment](#) 📌 280

Summary judgment may be rendered in favor of opposing party even though he has made no formal cross-motion for summary judgment, if undisputed facts are found which, when applied to the law, indicate that judgment against the moving party is appropriate. [Sunderlin v. First Reliance Standard Life Ins. Co., W.D.N.Y.2002, 235 F.Supp.2d 222. Summary Judgment](#) 📌 280

In passing on motion for summary judgment, court is required to view facts set forth in materials submitted in light most favorable to nonmoving party and to give nonmoving party benefit of any inferences which can logically be drawn from those facts, and also is required to resolve all conflicts in favor of nonmoving party. [Kraus v. Celotex Corp., E.D.Mo.1996, 925 F.Supp. 646. Summary Judgment](#) 📌 75

In deciding motion for summary judgment, court must read all facts in light most favorable to nonmoving party. [Terrell v. Childers, N.D.Ill.1996, 920 F.Supp. 854. Summary Judgment](#) 📌 75

In assessing whether summary judgment movant should prevail, district court must review the evidence and all reasonable factual inferences arising from it in light most favorable to nonmovant. [Pittman v. Massachusetts Mut. Life Ins. Co., S.D.Ga.1995, 904 F.Supp. 1384. Summary Judgment](#) 📌 75

Only those doubts about facts that are reasonable must be resolved in favor of nonmovant by court in considering motion for summary judgment. [Morris v. Clark Equipment Co.,](#)

[M.D.Ga.1995, 904 F.Supp. 1379. Summary Judgment](#) 🗝️ 75

When deciding motion for summary judgment, court must construe facts and draw all reasonable inferences in light most favorable to nonmoving party, and must apply standard of proof relevant to case or issue. [Hites v. Patriot Homes, Inc., N.D.Ind.1995, 904 F.Supp. 880. Summary Judgment](#) 🗝️ 75; [Summary Judgment](#) 🗝️ 80

A district court should enter summary judgment when moving party has sustained its burden of showing the absence of any genuine issue of material fact when all evidence is viewed in a light most favorable to nonmoving party. [Capsalis v. Worch, M.D.Fla.1995, 902 F.Supp. 227.](#)

Although court must view evidence in light most favorable to nonmovant for summary judgment, that is only true to the extent that nonmovant has actually proffered evidence controverting movant's assertion that no issue of material fact exists. [Woodbury v. Sears, Roebuck & Co., M.D.Fla.1995, 901 F.Supp. 1560. Summary Judgment](#) 🗝️ 75

District court has authority to render summary judgment in favor of nonmoving party even though he or she has made no formal cross-motion. [Wilkicki v. Brady, D.R.I.1995, 882 F.Supp. 1227. Summary Judgment](#) 🗝️ 279

In ruling on summary judgment motion, court must view record in light most favorable to nonmovant. [F.E.R.C. v. MacDonald, D.N.H.1994, 862 F.Supp. 667. Summary Judgment](#) 🗝️ 75

District court had no statutory authority to sua sponte order summary judgment to codefendant who, as opposed to defendants, had not requested that relief. [Gillette Tire Jobbers of Louisiana, Inc. v. Appliance Industries, Inc., E.D.La.1984, 596 F.Supp. 1277. Summary Judgment](#) 🗝️ 63

Although plaintiff did not file motion for summary judgment in response to defendant's motion for summary judgment, court was not precluded from entering such a ruling. [Marshall v. Sunshine and Leisure, Inc., M.D.Fla.1980, 496 F.Supp. 354. Summary Judgment](#) 🗝️ 279

---- Opportunity to present issues, sua sponte determination, duty and function of court

Chicken grower was prejudiced by district court's sua sponte grant of summary judgment to food supplier on court's revelation of a point not argued by supplier in its motion for summary judgment on grower's breach of chicken-growing contract claim requiring reversal and remand for further proceedings; court entered summary judgment on such basis not raised by supplier without considering any of the contrary arguments that grower might have made had the court provided him with notice and a reasonable amount of time to consider court's theory and to develop legal and factual arguments to dispute it. [Oldham v. O.K. Farms, Inc., C.A.10 \(Okla.\) 2017, 871 F.3d 1147. Federal Courts](#) 🗝️ 3705(3); [Federal Courts](#) 🗝️ 3783

Sua sponte grant of summary judgment in favor of financial advisors on client's breach of contract claim did not improperly deprive client of opportunity to oppose summary judgment, absent showing by client on appeal that it had a viable claim; client stated only that the advisors failed to perform all services required under the agreement, followed by a string-cite to the record. [Tranzact Technologies, Ltd. v. Evergreen Partners, Ltd., C.A.7 \(Ill.\) 2004, 366 F.3d 542. Federal Courts](#) 🗝️ 3705(3)

Sua sponte grant of summary judgment on Lanham Act claim regarding copying of registered tag on handbags resulted in no prejudice to moving parties, but moving parties were not provided with adequate opportunity to defend against grant of summary judgment prohibiting replication of handbag designs as to which nonmoving party failed to establish as matter of law that moving parties infringed upon its "trade dress." [Coach Leatherware Co., Inc. v. AnnTaylor, Inc., C.A.2 \(N.Y.\) 1991, 933 F.2d 162, 18 U.S.P.Q.2d 1907. Federal Courts](#) 🗝️ 3705(3)

District court's sua sponte conversion of motion to dismiss employment discrimination suit on jurisdictional grounds into motion for summary judgment was improper, as it took plaintiff by surprise and deprived her of reasonable opportunity to meet facts outside pleadings.

[Krijn v. Pogue Simone Real Estate Co., C.A.2 \(N.Y.\) 1990, 896 F.2d 687](#), on remand [752 F.Supp. 102. Summary Judgment](#) 🏠 280

Certified public accountant partnership, which sought preliminary injunction in its suit against California music tape publisher that had been removed to the district court, and against which, following hearing on motion for preliminary injunction, summary judgment was entered sua sponte by the court, did not have to be fully armed with legal theories and supporting factual premises in support of its case against publisher on the merits but should have been given opportunity to develop its alternative theory before summary judgment was granted. [Herzog and Straus v. GRT Corp., C.A.2 \(N.Y.\) 1977, 553 F.2d 789. Summary Judgment](#) 🏠 280; [Summary Judgment](#) 🏠 286

Action of district court, once defendants in antitrust action made motion to dismiss under rule authorizing dismissal, in considering testimony taken on preliminary injunction hearing, as well as contents of various affidavits, apparently regarding motion as one based on a failure to state a claim on which relief could be granted, which was evident from its treatment of motion as one for summary judgment and disposition, operated to deprive plaintiffs of benefit of rule that all parties shall be given reasonable opportunity to present all material made pertinent to a motion for summary judgment. [Winkelman v. New York Stock Exchange, C.A.3 \(Pa.\) 1971, 445 F.2d 786. Summary Judgment](#) 🏠 310; [Summary Judgment](#) 🏠 341

Summary judgment could be granted sua sponte in favor additional insured general contractor on its claim under Washington Insurance Fair Conduct Act (IFCA), since insurer moved for summary judgment nearly eight months after it responded to general contractor's motion for summary judgment on claim alleging unreasonable breach of its duty to defend, but not on IFCA claim, and insurer had full and fair opportunity in that time to ventilate IFCA claim and raise genuine factual issue but did not do so. [BDR Clyde Hill VII LLC v. Continental Western Insurance Company, W.D.Wash.2020, 478 F.Supp.3d 1097. Summary Judgment](#) 🏠 280

For purposes of entering summary judgment, sua sponte plaintiff had adequate opportunity to address issue on which entry of summary judgment was premised; court acknowledged critical nature of waiver issue and order, and both sides were requested to and did submit further briefs. [Wilkicki v. Brady, D.R.I.1995, 882 F.Supp. 1227. Summary Judgment](#) 🏠 280

Under proper circumstances, where parties have had full opportunity to present the issues and to contest the proposition that there exist no facts in dispute material to entry of judgment, court may enter judgment for party which has not in haec verba moved for summary judgment. [Cockrum v. Califano, D.C.D.C.1979, 475 F.Supp. 1222](#), remanded on other grounds [634 F.2d 1358, 204 U.S.App.D.C. 3. Summary Judgment](#) 🏠 280

---- Partial summary judgment, sua sponte determination, duty and function of court

Court has no authority to grant even partial summary judgment sua sponte; parties must be accorded notice and right to be heard. [Baker v. City of Detroit, E.D.Mich.1978, 458 F.Supp. 379](#), affirmed [704 F.2d 878](#), on rehearing [712 F.2d 222](#), certiorari denied [104 S.Ct. 703, 464 U.S. 1040, 79 L.Ed.2d 168](#), rehearing denied [104 S.Ct. 1431, 465 U.S. 1074, 79 L.Ed.2d 754. Summary Judgment](#) 🏠 63

---- Miscellaneous determinations, sua sponte determination, duty and function of court

Court's sua sponte summary judgment ruling that entity that engaged in foreclosure purchase of an employer was not a trade or business, and thus was not subject to withdrawal liability under the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), denied (ERISA) multiemployer pension plan and its trustees basic procedural protections to which they were entitled on summary judgment, notwithstanding that court had already denied their motion for summary judgment as to a separate issue, where only a few rudimentary non-dispositive facts existed as to the purchaser's status, and plan and trustees were not given the opportunity to present new evidence prior to the court's sua sponte ruling. [Hotel 71 Mezz Lender LLC v. National Retirement Fund, C.A.7 \(Ill.\) 2015, 778 F.3d 593](#), on remand [2015 WL 11255491. Summary Judgment](#) 🏠 280

District court's sua sponte grant of summary judgment in favor of employer on claim alleging employer defamed discharged employee under Puerto Rico law was premature,

since employer had not moved for summary judgment on defamation claim and failed to address claim in its reply brief, defamation issue had not been briefed, and neither party had presented evidence on defamation claim. [Baltodano v. Merck, Sharp & Dohme \(I.A.\) Corp., C.A.1 \(Puerto Rico\) 2011, 637 F.3d 38. Libel And Slander 📌 123\(1\)](#)

District court had power to grant summary judgment sua sponte in favor of cross claimant defendants, although cross claimant defendants did not file motion for summary judgment, where losing party had sufficient advance notice in form of summary judgment motion by plaintiff, both cross claimant defendants' and plaintiff's right to judgment turned on same issue, and losing party had opportunity to submit evidence in opposition. [Chrysler Credit Corp. v. Cathey, C.A.8 \(Ark.\) 1992, 977 F.2d 447. Summary Judgment 📌 280](#)

District court erred in sua sponte granting summary judgment for insurer on issue of insured's tort claims, where insurer's motion for summary judgment related only to issue of breach of contract claims and insured did not receive the required ten days notice so that it could present its case to district court. [Judwin Properties, Inc. v. U.S. Fire Ins. Co., C.A.5 \(Tex.\) 1992, 973 F.2d 432, rehearing denied. Summary Judgment 📌 280](#)

Where plaintiff contested contention that issues raised by counterclaim were identical to those already disposed of by prior summary judgment in favor of defendants on plaintiff's claim, plaintiff was entitled to a chance to present the matter through discovery procedures or opposing affidavits and to the opportunity to convince the court that a material fact dispute did exist with respect to the counterclaim, so that it was improper for trial court to sua sponte enter judgment for defendants on their counterclaim approximately one month after it entered judgment for defendants with respect to plaintiff's claim. [Sharlitt v. Gorinstein, C.A.5 \(Fla.\) 1976, 535 F.2d 282. Summary Judgment 📌 362](#)

District court would sua sponte grant summary judgment in part to former employee on the question of liability on her claim of discrimination under the Arizona Medical Marijuana Act (AMMA); the court issued an order which asked the parties to provide supplemental briefing discussing, in part, why employee should or should not be entitled to summary judgment on her claim under the AMMA, stating that there was no evidence indicating that employee was impaired at work or expert testimony establishing that the level of metabolites present in her positive drug screen demonstrated that marijuana was present in her system in a sufficient concentration to cause impairment, and despite such admonition, employer did not come forward with any evidence establishing that employee was impaired. [Whitmire v. Wal-Mart Stores Incorporated, D.Ariz.2019, 359 F.Supp.3d 761. Summary Judgment 📌 280](#)

Order finding as matter of law that employee's renal cancer constituted actual disability under Americans with Disabilities Act (ADA), as amended, was warranted in discrimination action against his employer, even in absence of employee making motion for summary judgment on that issue, where employee's renal cancer, when active, constituted physical impairment under ADA that substantially limited major life activity of normal cell growth. [Norton v. Assisted Living Concepts, Inc., E.D.Tex.2011, 786 F.Supp.2d 1173. Summary Judgment 📌 117\(1\); Summary Judgment 📌 351](#)

Sua sponte summary judgment on § 1983 *Monell* claim against county brought by grandparents who were legal guardians of their grandchildren, which claim alleged that protective detention of grandchildren for alleged abuse by grandfather violated grandparents' Fourth and Fourteenth Amendment due process rights, was not warranted; defendants did not move for summary judgment on the claim, the claim was not fully briefed, and grandparents did not have adequate notice or opportunity to respond to such motion. [Barnes v. County of Placer, E.D.Cal.2009, 654 F.Supp.2d 1066, affirmed 386 Fed.Appx. 633, 2010 WL 2781008. Summary Judgment 📌 280](#)

Sua sponte entry of summary judgment was appropriate in contractual reformation case in favor of nonmovant where there were no grounds for contractual reformation and further discovery would not alter outcome. [Tucard, LLC v. Fidelity Nat. Property & Cas. Ins. Co., D.Mass.2008, 567 F.Supp.2d 215. Summary Judgment 📌 280](#)

Although town and its constable did not move for summary judgment in civil rights action against them arising out of destruction of owner's dogs, upon determination that owner's constitutional rights were not violated when town constable destroyed dogs, action could be

dismissed with regard to all parties. [Engsberg v. Town of Milford, W.D.Wis.1985, 601 F.Supp. 1438](#), affirmed [785 F.2d 312](#). [Summary Judgment](#) 🏠 111

Adversary defendant did not have notice that the reasonableness of the exclusivity provision of its promotional agreement with plaintiff might be decided on summary judgment and, thus, the bankruptcy court erred in granting summary judgment in favor of plaintiff on grounds that the exclusivity provision was unreasonable under state law; plaintiff did not raise the reasonableness of the exclusivity provision in his motion for summary judgment and, although defendant mentioned the issue in its opposition in a footnote, plaintiff did not reference this footnote or the case cited therein in his reply, and the bankruptcy court did not ask either party to address reasonableness at the hearing. [In re Ortiz, C.D.Cal.2009, 400 B.R. 755](#). [Bankruptcy](#) 🏠 2164.1

Opposition to motion, duty and function of court

District court did not abuse its discretion by declining to grant summary judgment motion for want of an opposition thereto; local rule provided that district court "may assume" facts not denied in opposition were admitted, thus leaving the matter to district court's discretion, district court's scheduling order requiring opponent to oppose motion did not limit this discretion because, being interlocutory, district court retained the power to revise scheduling order at any time prior to appeal, and opponent of summary judgment motion had filed a cross-motion addressing the same issues that would have been addressed in opponent's response to summary judgment motion. [Capitol Sprinkler Inspection, Inc. v. Guest Services, Inc., C.A.D.C.2011, 630 F.3d 217, 394 U.S.App.D.C. 73](#). [Summary Judgment](#) 🏠 282

Even if the plaintiff fails to oppose a defendant's motion for summary judgment, to support a grant of summary judgment, the uncontested facts and other evidentiary facts of record must still show that defendant is entitled to summary judgment. [De Jesus v. LTT Card Services, Inc., C.A.1 \(Puerto Rico\) 2007, 474 F.3d 16](#), on remand [2008 WL 11357826](#). [Summary Judgment](#) 🏠 282; [Summary Judgment](#) 🏠 351

In an unopposed motion for summary judgment, the district court is still obliged to consider the motion on its merits, in light of the record as constituted, in order to determine whether judgment would be legally appropriate. [Aguiar-Carrasquillo v. Agosto-Alicea, C.A.1 \(Puerto Rico\) 2006, 445 F.3d 19](#). [Summary Judgment](#) 🏠 282

Despite failure of federal prisoner, who was litigating pro se, to file an opposition to prison officials' motion to dismiss or for summary judgment in prisoner's action under § 1983 and Federal Tort Claims Act (FTCA) challenging prison disciplinary sanction imposed on prisoner, District Court would not treat motion as conceded, as basis for granting the motion; doing so would effectively place burden of persuasion on prisoner and would risk circumvention of clear preference in favor of resolving disputes on their merits. [Chandler v. Federal Bureau of Prisons, D.D.C.2017, 227 F.Supp.3d 112](#). [Federal Civil Procedure](#) 🏠 1825; [Summary Judgment](#) 🏠 282; [Summary Judgment](#) 🏠 291

Parents of autistic and mentally retarded student would not be granted leave to supplement their briefs opposing summary judgment to include Memorandum and Order from Commonwealth of Pennsylvania's Professional Standards and Practices Commission, which revoked elementary school special education teacher's professional educator certification, since parents' claims under Rehabilitation Act and Pennsylvania Constitution against institutional defendants failed as matter of law, regardless of facts, and whatever report would reveal with respect to individual defendants' knowledge of teacher's actions would not change district court's decision regarding those defendants. [Hamilton v. Spriggle, M.D.Pa.2013, 965 F.Supp.2d 550](#), appeal dismissed. [Summary Judgment](#) 🏠 288

Notwithstanding that there is no opposition to a summary judgment, district court must entertain the motion on the merits and may not grant the request as a sanction even for failure to file an opposition. [Delanoy v. Aerotek, Inc., D.Puerto Rico 2009, 614 F.Supp.2d 200](#). [Summary Judgment](#) 🏠 351

District court must determine whether summary judgment is appropriate, even if non-moving party does not file a brief in opposition to motion. [Molloy v. Government of the Virgin Islands, D.Virgin Islands 2007, 594 F.Supp.2d 595](#). [Summary Judgment](#) 🏠 282; [Summary Judgment](#) 🏠 351

Since the summary judgment rule is not cast in the mandatory posture of "shall," and since it allows for a finding of appropriateness, a district court is not obligated to grant every such motion opposed by procedurally deficient papers; where an opposition is deemed lacking, the court may still deny summary judgment. [U.S. v. Honeywell Intern., Inc., E.D.Cal.2008, 542 F.Supp.2d 1188. Summary Judgment](#) 📌 78

Even when a motion for summary judgment is unopposed, the district court is not relieved of its duty to decide whether the movant is entitled to judgment as a matter of law. [Ramnarain v. City of New York, E.D.N.Y.2007, 474 F.Supp.2d 443. Summary Judgment](#) 📌 282

Even in the absence of a response by defendants to a plaintiff's motion for summary judgment, the district court must determine if plaintiff satisfied its initial responsibility of demonstrating that no genuine issue of material fact existed as to each count of the complaint, and further, whether plaintiff is entitled to summary judgment as a matter of law. [Financial Federal Credit Inc. v. Boss Transp., Inc., M.D.Ga.2006, 456 F.Supp.2d 1367. Summary Judgment](#) 📌 45(2)

The district court cannot base the entry of summary judgment on the mere fact that the summary judgment motion was unopposed, since the summary judgment rule only permits the entry of summary judgment against an adverse party who fails to respond if it is appropriate. [Sherk v. Adesa Atlanta, LLC, N.D.Ga.2006, 432 F.Supp.2d 1358. Summary Judgment](#) 📌 282

District court may not grant uncontested summary judgment motion without making inquiry into merits of the moving party's motion. [Peter v. Lincoln Technical Institute, Inc., E.D.Pa.2002, 255 F.Supp.2d 417. Summary Judgment](#) 📌 282

Court must enter summary judgment against nonmovant who fails to make showing sufficient to establish existence of essential element to that party's case, and on which that party will bear burden of proof; such complete failure of proof on essential element of nonmovant's case renders all other facts immaterial. [Huenink v. Rice, D.Kan.1994, 859 F.Supp. 1398. Summary Judgment](#) 📌 51

Plaintiff's failure to respond to defendant's motion for summary judgment does not relieve court of duty to examine merits of defendant's legal arguments. [Thomas v. Shoney's Inc., S.D.W.Va.1994, 845 F.Supp. 388, affirmed 60 F.3d 825. Summary Judgment](#) 📌 282

Court is required to examine merits of motion for summary judgment even though nonmoving party fails to object to motion. [Freund v. Fleetwood Enterprises, Inc., D.Me.1991, 756 F.Supp. 604. Summary Judgment](#) 📌 351

Review of documents, duty and function of court

Giving principal for commodity pool operators more time, prior to considering summary judgment motion of Commodity Futures Trading Commission (CFTC), for his expert to review e-mails contained on CD-ROM that United States Attorneys Office (USAO) produced in his criminal case was unwarranted in CFTC's action against principal for fraudulent inducement to invest in commodity pools, in violation of Commodity Exchange Act (CEA) and its implementing regulations, where principal already possessed hard copies of e-mails, yet he waited until three weeks before close of discovery to request documents from purported author and never deposed him, and he made no showing as to how e-mails were material to summary judgment in CFTC's civil case. [U.S. Commodity Futures Trading Com'n v. Kratville, C.A.8 \(Neb.\) 2015, 796 F.3d 873. Summary Judgment](#) 📌 345

Weighing of evidence, duty and function of court

On review of summary judgment for police officer, based on qualified immunity, on suspect's [§ 1983](#) claim arising out of police shooting, Court of Appeals improperly weighed evidence and resolved disputed issues in favor of moving party, by failing to credit key evidence offered by suspect; Court should have acknowledged and credited suspect's evidence with regard to lighting, his mother's demeanor, whether he shouted words that were overt threat, and his positioning during the shooting. [Tolan v. Cotton, U.S.2014, 134 S.Ct. 1861, 572 U.S. 650, 188 L.Ed.2d 895, on remand 573 Fed.Appx. 330, 2014 WL 2726678. Federal Courts](#) 📌 3675; [Summary Judgment](#) 📌 118

Credibility assessments, choices between conflicting versions of the events, and the weighing of evidence are matters for the jury, not for the court on a motion for summary

judgment; if, as to the issue on which summary judgment is sought, there is any evidence in the record from which a reasonable inference could be drawn in favor of the opposing party, summary judgment is improper. [Curry v. City of Syracuse, C.A.2 \(N.Y.\) 2003, 316 F.3d 324. Summary Judgment](#) 🗝️ 88; [Summary Judgment](#) 🗝️ 96

On summary judgment, it is not court's role to weigh disputed evidence and decide which is more probative. [Lawrence v. National Westminster Bank New Jersey, C.A.3 \(N.J.\) 1996, 98 F.3d 61. Summary Judgment](#) 🗝️ 96

On motion for summary judgment, court must not weigh evidence or determine truth of matter but only determine whether there is genuine issue for trial. [Crane v. Conoco, Inc., C.A.9 \(Mont.\) 1994, 41 F.3d 547. Summary Judgment](#) 🗝️ 45(1); [Summary Judgment](#) 🗝️ 96

At summary judgment stage, judge's function is not to weigh evidence and determine truth of matter; nonetheless, where record taken as a whole could not lead rational trier of fact to find for nonmovant, summary judgment for movant is proper. [Concrete Works of Colorado, Inc. v. City and County of Denver, C.A.10 \(Colo.\) 1994, 36 F.3d 1513, rehearing denied, certiorari denied 115 S.Ct. 1315, 514 U.S. 1004, 131 L.Ed.2d 196, on remand 86 F.Supp.2d 1042. Summary Judgment](#) 🗝️ 50; [Summary Judgment](#) 🗝️ 80; [Summary Judgment](#) 🗝️ 96

Even at summary judgment stage, judge in bench trial has limited discretion to decide that same evidence, presented to judge as trier of fact in plenary trial, could not possibly lead to different result, and thus grant summary judgment on that basis; judge should not be forbidden from drawing inferences from evidence submitted on summary judgment when that same judge will act as trier of fact, unless those inferences involve issues of witness credibility or disputed material facts. [Matter of Placid Oil Co., C.A.5 \(Tex.\) 1991, 932 F.2d 394. Summary Judgment](#) 🗝️ 72; [Summary Judgment](#) 🗝️ 74

As summary judgment turns on whether a proper jury question is presented, judge is generally not to weigh evidence or make credibility choices. [Orthopedic & Sports Injury Clinic v. Wang Laboratories, Inc., C.A.5 \(La.\) 1991, 922 F.2d 220. Summary Judgment](#) 🗝️ 96

Neither Court of Appeals nor district court is entitled to weigh evidence or pass on credibility of witnesses in deciding summary judgment issues. [Zuchel v. Spinharney, C.A.10 \(Colo.\) 1989, 890 F.2d 273. Summary Judgment](#) 🗝️ 96

On a motion for summary judgment, neither an appellate court nor a trial court is permitted to weigh the evidence, pass upon credibility, or speculate as to the ultimate findings of fact. [Aronsen v. Crown Zellerbach, C.A.9 \(Cal.\) 1981, 662 F.2d 584, certiorari denied 103 S.Ct. 1183, 459 U.S. 1200, 75 L.Ed.2d 431. Summary Judgment](#) 🗝️ 96

Summary judgment can be entered only if everything in the record--pleadings, depositions, interrogatories, affidavits, etc.,--demonstrates that no genuine issue of material fact exists; in this regard, the district court must not resolve factual disputes by weighing conflicting evidence, since it is a province of the jury to assess the probative value of the evidence. [Kennett-Murray Corp. v. Bone, C.A.5 \(Ala.\) 1980, 622 F.2d 887. Summary Judgment](#) 🗝️ 45(1); [Summary Judgment](#) 🗝️ 93

In disposing of a summary judgment motion a court must determine whether a genuine issue as to any material fact exists and, in doing so, it should not proceed to assess probative value of any of the evidence presented in support of or in opposition to the motion. [U. S. v. An Article of Food Consisting of 345/50-Pound Bags, C.A.5 \(Ga.\) 1980, 622 F.2d 768. Summary Judgment](#) 🗝️ 96

It is not for the district judge to accept or reject either party's "version of the facts" on a motion for summary judgment. [Tankersley v. Albright, C.A.7 \(Ill.\) 1975, 514 F.2d 956. Summary Judgment](#) 🗝️ 72

In passing on motion for summary judgment, trial court should not assess the probative value of any of the evidence. [Gross v. Southern Ry. Co., C.A.5 \(Ga.\) 1969, 414 F.2d 292. Summary Judgment](#) 🗝️ 96

Trial court can and should assess evidence presented upon motion for summary judgment to determine its admissibility and to ascertain whether all admissible evidence creates genuine, material dispute of facts, but court should be careful to avoid assessing probative

value of any evidence presented to it. [Gauck v. Meleski, C.A.5 \(Fla.\) 1965, 346 F.2d 433.](#)
[Summary Judgment](#) 📌 13

Court may not consider credibility or weight of evidence in deciding motion for summary judgment, even if quantity of moving party's evidence far outweighs that of its opponent. [Super Fresh Food Markets, Inc. v. United Food & Commercial Workers Local Union 1776, E.D.Pa.2003, 249 F.Supp.2d 546.](#) [Summary Judgment](#) 📌 96

Court in considering summary judgment motion may not weigh evidence, as summary judgment admits of no room for credibility determinations and no room for measured weighing of conflicting evidence such as trial process entails, and if facts permit more than one reasonable inference, court on summary judgment may not adopt inference least favorable to nonmoving party. [Rayzor v. U.S., D.Puerto Rico 1996, 937 F.Supp. 115,](#) affirmed [121 F.3d 695.](#) [Summary Judgment](#) 📌 75; [Summary Judgment](#) 📌 96

In deciding motion for summary judgment, district court must not resolve factual disputes by weighing conflicting evidence since it is province of jury to assess probative value of evidence. [Patton v. Southern States Transp., Inc., S.D.Miss.1996, 932 F.Supp. 795,](#) affirmed [136 F.3d 1328.](#) [Summary Judgment](#) 📌 96

Summary judgment motion is not chance for court to act as jury and determine witness credibility, weigh evidence, or decide upon competing inferences. [Tenbrink v. Federal Home Loan Bank, D.Kan.1996, 920 F.Supp. 1156.](#) [Summary Judgment](#) 📌 94; [Summary Judgment](#) 📌 96

In making its determination on motion for summary judgment, court's sole function is to determine whether there is any material dispute of fact that requires trial; credibility determinations, weighing evidence, and drawing reasonable inferences are jury functions. [California Union Ins. Co. v. Liberty Mut. Ins. Co., N.D.Ill.1996, 920 F.Supp. 908,](#) reconsideration denied [930 F.Supp. 317,](#) amended [930 F.Supp. 320.](#) [Summary Judgment](#) 📌 94; [Summary Judgment](#) 📌 96

On motion for summary judgment, court determines whether sufficient evidence has been presented to make issue of fact proper jury question, but does not weigh evidence, judge credibility of witnesses, or determine truth of matter. [Lawhorn & Associates, Inc. v. Patriot General Ins. Co., E.D.Tenn.1996, 917 F.Supp. 538.](#) [Summary Judgment](#) 📌 96

When presented with summary judgment motion, judge's function is not to weigh the evidence and determine truth of the matter for this is the prerogative of the finder of fact. [Sherry v. Central Nat. Bank of Canajoharie, N.D.N.Y.1995, 886 F.Supp. 256.](#) [Summary Judgment](#) 📌 96

Function of court on motion for summary judgment is not to weigh the evidence and determine the truth of the matter, but rather to determine whether there is a genuine issue for trial; however, summary judgment motion will not be defeated merely on the basis of a metaphysical doubt about the facts on basis of conjecture or surmise; in other words, nonmoving party must come forward with significant probative evidence in support of its complaint. [Kaczmarek v. Bethlehem Steel Corp., W.D.N.Y.1995, 884 F.Supp. 768.](#) [Summary Judgment](#) 📌 77; [Summary Judgment](#) 📌 95; [Summary Judgment](#) 📌 96

At summary judgment stage, it is not federal district court's place to weigh conflicting evidence and in the face of contradictory assertions, summary judgment motion must be denied. [Polote Corp. v. Metric Constructors, Inc., S.D.Ga.1995, 880 F.Supp. 836.](#) [Summary Judgment](#) 📌 96

Court's task on motion for summary judgment is, ordinarily, not to weigh facts or evaluate credibility of affidavits and other evidence; rather, court need only determine whether record, as identified by parties, shows existence of real controversy over material issue such that controversy must be resolved by finder of fact at trial. [Belmore v. City Pages, Inc., D.Minn.1995, 880 F.Supp. 673, 34 U.S.P.Q.2d 1295.](#) [Summary Judgment](#) 📌 96

On motion for summary judgment, court must determine whether evidence presents sufficient disagreement to require submission to jury or whether it is so one-sided that one party must prevail as matter of law. [Wilson Group, Inc. v. Quorum Health Resources, Inc., D.S.C.1995, 880 F.Supp. 416.](#) [Summary Judgment](#) 📌 64; [Summary Judgment](#) 📌 93

Summary judgment motion should be interpreted by trial court to accomplish its purpose of disposing of factually unsupported claims, and trial judge's function is not to weigh evidence and determine truth of matter, but to determine whether there is genuine issue for trial.

[Thomas v. St. Luke's Health Systems, Inc., N.D.Iowa 1994, 869 F.Supp. 1413](#), affirmed 61 F.3d 908. [Summary Judgment](#) 2; [Summary Judgment](#) 96

Court's function on motion for summary judgment is not to weigh evidence, judge credibility, or in any way determine truth of matter; rather, court's inquiry is whether evidence presents sufficient disagreement to require submission to trier of fact or whether it is so one-sided that one party must prevail as a matter of law. [Stem v. Gannett Satellite Information Network, Inc., W.D.Tenn.1994, 866 F.Supp. 355](#). [Summary Judgment](#) 80; [Summary Judgment](#) 96

Weighing evidence or assessing witness credibility are matters beyond court's purview in summary judgment proceedings. [Phelps v. Hamilton, D.Kan.1993, 840 F.Supp. 1442](#), affirmed in part, reversed in part 122 F.3d 1309. [Summary Judgment](#) 96

In determining whether genuine issue of material fact exists, court does not weigh evidence but instead inquires whether reasonable jury, faced with evidence presented could return verdict for nonmoving party. [Woodland v. Angus, D.Utah 1993, 820 F.Supp. 1497](#). [Summary Judgment](#) 46

On motion for summary judgment, court's function is not to weigh evidence and determine truth of matter but to determine whether there is genuine issue for trial; if evidence is merely colorable, or is not significantly probative, judgment may not be granted. [Brizendine on Behalf of Estates of Brown Truckload, Inc. v. Kroger Co., S.D.Ohio 1993, 817 F.Supp. 672](#). [Summary Judgment](#) 89; [Summary Judgment](#) 96

MOTIONS TREATED AS SUMMARY JUDGMENT MOTIONS

Motions generally, motions treated as summary judgment motions

Federal district court will treat motion as one for summary judgment where matters extrinsic to the pleadings have been presented to and not excluded by court and parties have been given reasonable opportunity to present all material pertinent to the issues raised by motion. [Bloomquist v. Brady, W.D.N.Y.1995, 894 F.Supp. 108](#). [Summary Judgment](#) 278(1)

Bankruptcy proceedings, motions treated as summary judgment motions

The fact that under former § 543 of Title 11 judge is to proceed without a jury does not mean that he is not to try issues in ordinary form, and his order is not a "summary judgment" though it should be an expeditious judgment. [Cohen v. Eleven West 42nd Street, C.C.A.2 \(N.Y.\) 1940, 115 F.2d 531](#).

Chapter 7 debtor's motion to dismiss adversary proceeding for failure to state claim upon which relief could be granted would be converted to motion for summary judgment, where only issues presented were issues of law, and materials outside pleading had been offered and accepted in conjunction with motion. [In re Gadsden, Bkrcty.E.D.N.Y.1991, 128 B.R. 45](#). [Bankruptcy](#) 2164.1

Although, in proceeding on complaint seeking return of \$18,000 levied on and seized by the Internal Revenue Service within 90 days of the debtor's petition filing date under § 701 et seq. of this title, counsel for the Service submitted with his motion for judgment on the pleadings a sworn declaration alleging certain facts "on information and belief," the bankruptcy court would not treat the motion as one seeking summary judgment, since such declaration did not show affirmatively that the affiant was competent to testify to the matters stated therein. [In re R&T Roofing Structures & Commercial Framing, Inc., Bkrcty.D.Nev.1984, 42 B.R. 908](#). [Summary Judgment](#) 278(1)

Costs, motions treated as summary judgment motions

Motion seeking award of costs and reasonable attorney fees pursuant to employment practices provisions of § 2000e-5 of Title 42 was improperly denominated as one for summary judgment; however, it would be construed as a motion brought pursuant to provision of such section pertaining to award of costs and attorneys' fees. [Richardson v. Civil Service Commission of State of N.Y., S.D.N.Y.1976, 420 F.Supp. 64](#). [Civil Rights](#) 1597

Declaratory judgment, motions treated as summary judgment motions

District court would treat motion for declaratory judgment brought by insureds, who owned property where dry cleaning business contaminated nearby properties and groundwater, seeking judgment that their liability insurer was liable for unreimbursed and future defense costs pursuant to settlement agreement, as a motion for summary judgment, as insureds sought declaration from court that their insurer was liable as a matter of law for specific costs incurred. [Jenkins Starr, LLC v. Continental Ins. Co., Inc., D.Mass.2009, 601 F.Supp.2d 344](#). Insurance 📌 3389; Summary Judgment 📌 172

Dismissal, motions treated as summary judgment motions--Generally

Unlike a motion to dismiss, in which party's allegations and pleadings must be accepted, a court in considering summary judgment may look behind the pleadings to facts developed during discovery. [George C. Frey Ready-Mixed Concrete, Inc. v. Pine Hill Concrete Mix Corp., C.A.2 \(N.Y.\) 1977, 554 F.2d 551](#). Summary Judgment 📌 277(2)

Failure of party moving for dismissal of complaint to establish that facts are undisputed does not entitle nonmoving party to summary judgment. [Lowenschuss v. Kane, C.A.2 \(N.Y.\) 1975, 520 F.2d 255](#), on remand [72 F.R.D. 498](#). Summary Judgment 📌 41

If order dismissing complaint was intended to operate as entry of summary judgment, order was improper where based solely on complaint and motion to dismiss. [Reed v. Board of Ed. of Parkway School Dist., C.A.8 \(Mo.\) 1972, 460 F.2d 824](#). Summary Judgment 📌 57

Where appropriate, trial judge may, upon motion for summary judgment, dismiss for failure to state a cause of action. [Schwartz v. Compagnie General Transatlantique, C.A.2 \(N.Y.\) 1968, 405 F.2d 270](#). Summary Judgment 📌 351

Though motion in federal district court for summary judgment entails more than a motion to dismiss for failure to state a cause of action, it still does not reach the stage of a trial on the merits. [Preston v. U. S. Trust Co. of New York, C.A.2 \(N.Y.\) 1968, 394 F.2d 456](#), certiorari denied [89 S.Ct. 624, 393 U.S. 1019, 21 L.Ed.2d 563](#). Summary Judgment 📌 2

Dismissal of complaint for failure to state claim is an even more stringent and summary disposition than is summary judgment. [Austin v. House of Vision, Inc., C.A.7 \(Ill.\) 1967, 385 F.2d 171](#). Federal Civil Procedure 📌 1772

District court which has before it the complaint and a motion for dismissal for failure to state a cause of action may properly treat the motion as one for summary judgment. [Bradford v. School Dist. No. 20, Charleston, S. C., C.A.4 \(S.C.\) 1966, 364 F.2d 185](#). Summary Judgment 📌 278(2)

A motion to dismiss may be treated as one for summary judgment. [Progress Development Corp. v. Mitchell, C.A.7 \(Ill.\) 1961, 286 F.2d 222](#). Summary Judgment 📌 278(2)

District court would not convert federal employer's motion to dismiss for failure to state a claim to a motion for summary judgment in employment discrimination action brought by a pro se former employee; employer failed to comply with the court's rules regarding briefing motions for summary judgment, and the court did not solicit a more detailed response from employee through issuance of an order granting notice of the court's intent to consider the motion as one for summary judgment. [Tyson v. Brennan, D.D.C.2017, 277 F.Supp.3d 28](#), affirmed [2018 WL 5927921](#). Federal Civil Procedure 📌 1832; Summary Judgment 📌 291

A motion for summary judgment is designed to go to the merits of an action whereas a motion to dismiss for lack of subject-matter jurisdiction involves a matter in abatement. [Titsch Printing, Inc. v. Hastings, D.C.Colo.1978, 456 F.Supp. 445](#). Federal Courts 📌 2071; Summary Judgment 📌 28

Contentions of fact are not properly before district court on a motion to dismiss, but are more properly considered in a motion for summary judgment. [Peterson v. Lehigh Valley Dist. Council, E.D.Pa.1978, 453 F.Supp. 735](#). Federal Civil Procedure 📌 1831; Summary Judgment 📌 13

Motion to dismiss for failure to state claim upon which relief can be granted may properly be treated as motion for summary judgment. [Sud v. Import Motors Ltd., Inc., W.D.Mich.1974, 379 F.Supp. 1064](#). Summary Judgment 📌 278(2)

---- Discretion of court, dismissal, motions treated as summary judgment motions

A trial court may, in its consideration of a motion to dismiss, treat such motion as a motion for summary judgment and consider evidence outside the pleadings. [Soley v. Star & Herald Co., C.A.5 \(Canal Zone\) 1968, 390 F.2d 364. Summary Judgment](#) 📌 278(2)

This rule makes it discretionary with court whether in ruling on motion for judgment on pleadings to accept matters outside pleadings and treat motion as one for summary judgment. [A. S. Abell Co. v. Baltimore Typographical Union No. 12, C.A.4 \(Md.\) 1964, 338 F.2d 190. Federal Civil Procedure](#) 📌 1054; [Summary Judgment](#) 📌 278(1)

When parties submit materials outside of a motion to dismiss, court has discretion to treat the motion as one for summary judgment. [McQueen v. Shelby County, C.D.Ill.1990, 730 F.Supp. 1449. Summary Judgment](#) 📌 278(2)

---- Defenses, dismissal, motions treated as summary judgment motions

Court would convert Inspector General's motion to dismiss retired Fire Marshal's § 1983 action on grounds that claims against Inspector General were time barred into motion for summary judgment, and would defer ruling on motion, where determination of issue of whether Inspector General, who was added as defendant in second amended complaint, could have reasonably expected that she might be added as a defendant, as required for amended complaint to relate back to original complaint, would require submission of materials outside the pleadings. [Kregler v. City of New York, S.D.N.Y.2011, 770 F.Supp.2d 602, subsequent determination 821 F.Supp.2d 651, affirmed 604 Fed.Appx. 44, 2015 WL 1381429. Summary Judgment](#) 📌 278(2); [Summary Judgment](#) 📌 352

State prison officials' motion to dismiss prisoner's civil rights action for failure to state a claim, on ground that prisoner failed to exhaust his administrative remedies, as required by the Prison Litigation Reform Act, would be converted to one for summary judgment, only with respect to nonexhaustion issue, since nonexhaustion was not clear from face of complaint, and prisoner had been given both notice of his obligation to submit evidentiary materials and an opportunity to do so. [Scott v. Gardner, S.D.N.Y.2003, 287 F.Supp.2d 477, on reconsideration in part 344 F.Supp.2d 421, on reconsideration in part 2005 WL 984117. Summary Judgment](#) 📌 278(2)

Prison officials' motion to dismiss inmate's mistreatment claim, based on allegations that inmate failed to satisfy exhaustion of administrative remedies requirement imposed by Prison Litigation Reform Act (PLRA), which should have been pleaded as affirmative defense and followed by motion for summary judgment, would be converted to summary judgment motion, with inmate offered opportunity to respond. [Torrence v. Pesanti, D.Conn.2003, 239 F.Supp.2d 230. Summary Judgment](#) 📌 278(2)

Employer's motion to dismiss Title VII action on ground of general waiver signed by former employee would be treated as motion for summary judgment because consideration of the waiver itself and circumstances surrounding its execution were required to address employer's contention. [Baba v. Warren Management Consultants, Inc., S.D.N.Y.1995, 882 F.Supp. 339, affirmed 89 F.3d 826, certiorari denied 117 S.Ct. 119, 519 U.S. 840, 136 L.Ed.2d 70, rehearing denied 117 S.Ct. 544, 519 U.S. 1022, 136 L.Ed.2d 428. Federal Civil Procedure](#) 📌 1832; [Summary Judgment](#) 📌 278(2)

Although release and accord and satisfaction are affirmative defenses to be pleaded, they may be considered before answer if motion to dismiss is converted into one for summary judgment accordingly, summary judgment of dismissal could not be granted in favor of government in action under Federal Tort Claims Act, §§ 1346(b) and 2671 et seq. of this title, on ground that plaintiff's acceptance of an administrative settlement effected a release of claim. [Cordaro v. Lusardi, S.D.N.Y.1973, 354 F.Supp. 1147. Summary Judgment](#) 📌 155; [Summary Judgment](#) 📌 286

In determining res judicata effect of proceedings by plaintiff before state courts, district court, in civil rights action based on defendants' alleged wrongful discharge of plaintiff from her position as a teacher in public school system, would construe defendants' motions to dismiss for failure to state a claim as motions for summary judgment, but where record attached to defendants' supplemental brief was neither certified nor supported by appropriate affidavit, rule governing summary judgment was not complied with, and defendants would be required to include as part of the record any additional matters necessary for an understanding of what was decided in state proceedings. [Hood v. Burnett,](#)

N.D.Ga.1971, 51 F.R.D. 477. [Res Judicata](#) 663; [Summary Judgment](#) 230; [Summary Judgment](#) 278(2); [Summary Judgment](#) 313(1)

---- **Jurisdiction, dismissal, motions treated as summary judgment motions**

District court, in qui tam suit against government contractor under False Claims Act, should have treated contractor's attack on court's subject matter jurisdiction as motion for summary judgment, rather than as motion to dismiss for lack of subject matter jurisdiction; contractor contended that suit was barred in that it was based upon publicly disclosed allegations, and jurisdictional question of whether public disclosure had occurred arose out of same statute that created cause of action. *U.S. ex rel. Fine v. MK-Ferguson Co.*, C.A.10 (N.M.) 1996, 99 F.3d 1538. [Federal Courts](#) 2078; [Summary Judgment](#) 278(2)

District court would decline to convert defendants' motion to dismiss ADEA claims for lack of subject matter jurisdiction due to failure to satisfy threshold number of employees, filed in error because that was not a jurisdictional requirement, into motion to dismiss for failure to state a claim or motion for summary judgment. *Basile v. Levittown United Teachers*, E.D.N.Y.2014, 17 F.Supp.3d 195. [Federal Civil Procedure](#) 1825; [Federal Courts](#) 2086; [Summary Judgment](#) 278(2)

A court can convert a motion to dismiss for lack of subject matter jurisdiction into a motion to dismiss for failure to state a claim upon which relief can be granted or a summary judgment motion when resolution of the jurisdictional question is intertwined with the merits of the case; the jurisdictional question is intertwined with the merits of the case if subject matter jurisdiction is dependent on the same statute which provides the substantive claim in the case. *Torres v. Bella Vista Hospital, Inc.*, D.Puerto Rico 2007, 523 F.Supp.2d 123. [Federal Civil Procedure](#) 1825; [Federal Courts](#) 2078; [Summary Judgment](#) 278(2)

District court has wide discretion to allow affidavits, documents and even a limited evidentiary hearing to resolve disputed jurisdictional facts and may consider such evidence without turning the motion into one for summary judgment. *Scaccia v. Lemmie*, S.D.Ohio 2002, 236 F.Supp.2d 830. [Federal Courts](#) 2080

Unlike motion to dismiss for failure to state claim upon which relief can be granted, motion to dismiss for lack of subject matter jurisdiction cannot evolve into summary judgment. *Mann v. Hanil Bank*, E.D.Wis.1995, 900 F.Supp. 1077. [Federal Courts](#) 2078; [Summary Judgment](#) 278(2)

---- **Notice and hearing, dismissal, motions treated as summary judgment motions**

District court should not have converted employer's alternative motion for summary judgment into motion brought by union without notice to parties, and error from conversion was harmful. *R.J. Corman Derailment Services, LLC v. International Union of Operating Engineers, Local Union 150, AFL-CIO*, C.A.7 (Ill.) 2003, 335 F.3d 643. [Federal Courts](#) 3705(3); [Summary Judgment](#) 278(1)

District court converted into a motion for summary judgment a prison director's motion to dismiss inmate's civil rights challenge to regulations on prison religious activities, where dismissal order expressly relied upon the regulations, which appeared nowhere in the record except appended to director's affidavit in support of motion, in concluding regulations were reasonably related to legitimate penological interests; thus, court was required to inform inmate of his right to file counter-affidavits or other responsive materials and to alert him to fact that failure to do so might result in summary judgment against him. *Anderson v. Angelone*, C.A.9 (Nev.) 1996, 86 F.3d 932. [Federal Civil Procedure](#) 1832; [Summary Judgment](#) 278(2)

District court must expressly notify parties of its intention to convert motion to dismiss for failure to state claim to motion for summary judgment. *E.E.O.C. v. Green*, C.A.1 (Mass.) 1996, 76 F.3d 19. [Summary Judgment](#) 278(2)

District court may not convert motion to dismiss for failure to state claim into summary judgment motion without sufficient notice to opposing party and opportunity for that party to respond. *Groden v. Random House, Inc.*, C.A.2 (N.Y.) 1995, 61 F.3d 1045, 143 A.L.R. Fed. 721, 35 U.S.P.Q.2d 1547. [Summary Judgment](#) 278(2)

Current and former employees of nuclear weapons plan suing government contractor for damages from exposure to nuclear and nonnuclear hazardous substances had notice that district court converted contractor's motion to dismiss into motion for summary judgment,

where employees were first parties to submit materials outside of pleadings, and they responded in kind rather than objecting to introduction of materials outside pleadings.

[Building and Const. Dept. v. Rockwell Intern. Corp., C.A.10 \(Colo.\) 1993, 7 F.3d 1487](#), rehearing denied. [Summary Judgment](#) 🏠 278(2)

District court could treat motion to dismiss of employer and longshoremen's union as motion for summary judgment without notification to employees in employees' action against employer and union alleging breach of collective bargaining agreement and breach of duty of fair representation, despite employees' contention that they were not given opportunity to discover; employees had almost one year between filing of motion to dismiss and court's treatment of motion as one for summary judgment, over one year had elapsed since employees filed complaint, motion plainly sought summary judgment relief and employees understood motion in that way, and court had not stayed all discovery.

[Chaparro-Febus v. International Longshoremen Ass'n, Local 1575, C.A.1 \(Puerto Rico\) 1992, 983 F.2d 325](#). [Summary Judgment](#) 🏠 278(2)

Insured had sufficient notice that insurer's motion to dismiss would be treated as motion for summary judgment, where hearing on motion was not held until more than ten days after insured submitted matters outside pleadings to court. [Washington v. Allstate Ins. Co., C.A.5 \(La.\) 1990, 901 F.2d 1281](#), rehearing denied. [Summary Judgment](#) 🏠 278(2)

Fact that district court did not give express ten days' notice of its intent to treat motion to dismiss for failure to state a claim as a motion for summary judgment did not preclude the entry of summary judgment, where district court accepted evidence outside the pleadings and, thus, put parties on fair notice that motion to dismiss might be treated as motion for summary judgment, parties had more than ten days before judgment was rendered, and discovery continued for over 16 months following evidentiary hearing held on the motion. [Clark v. Tarrant County, Texas, C.A.5 \(Tex.\) 1986, 798 F.2d 736](#), rehearing denied [802 F.2d 455](#). [Summary Judgment](#) 🏠 278(2)

District court's review of first petition for habeas corpus in proceeding on second petition for habeas corpus did not transform state's motion to dismiss petition as successive into motion for summary judgment, thereby triggering ten-day notice requirement. [Allen v. Newsome, C.A.11 \(Ga.\) 1986, 795 F.2d 934](#). [Habeas Corpus](#) 🏠 801

Where plaintiff in opposing motion to dismiss stated in brief that, to be considered at all, motion would have to be treated as one for summary judgment, and that, in any event and no matter how characterized, the motion should be denied in all respects for reasons set forth, and where defendant in reply brief stated that defendant agreed with plaintiff that defense motion should be considered as motion for summary judgment and plaintiff failed to object to such characterization, trial court reasonably believed that plaintiff was treating motion as one for summary judgment and plaintiff would not later be heard to claim surprise, but, rather waived right to formal notice. [Prospero Associates v. Burroughs Corp., C.A.10 \(Colo.\) 1983, 714 F.2d 1022](#). [Summary Judgment](#) 🏠 278(2)

Party proceeding pro se is entitled to notice of the consequences of failing to respond to a motion to dismiss or for judgment on the pleadings which is being treated as a motion for summary judgment. [Maggette v. Dalsheim, C.A.2 \(N.Y.\) 1983, 709 F.2d 800](#), on remand. [Federal Civil Procedure](#) 🏠 1052; [Federal Civil Procedure](#) 🏠 1825

Habeas petitioner was entitled to notice that state's request for dismissal of his petition on grounds of delay would be treated as a motion for summary judgment and an opportunity to offer evidence in opposition to the motion. [Hill v. Linahan, C.A.11 \(Ga.\) 1983, 697 F.2d 1032](#), rehearing denied [701 F.2d 947](#). [Habeas Corpus](#) 🏠 801

When district court looks outside pleadings in ruling on what has been noticed by moving party as a motion to dismiss, motion must be converted and treated as one for summary judgment; if conversion occurs unexpectedly, notice to nonmoving party is required. [Portland Retail Druggists Ass'n v. Kaiser Foundation Health Plan, C.A.9 \(Cal.\) 1981, 662 F.2d 641](#). [Summary Judgment](#) 🏠 278(2)

Employer was not deprived of due process by court's failure to give parties notice that it intended to treat employer's motion to dismiss petition for enforcement of arbitration award into motion for summary judgment, where employer failed to allege the specific disputed factual issues sufficient to preclude summary judgment. [Milwaukee Typographical Union](#)

[No. 23 v. Newspapers, Inc., C.A.7 \(Wis.\) 1981, 639 F.2d 386](#), certiorari denied [102 S.Ct. 144, 454 U.S. 838, 70 L.Ed.2d 119. Constitutional Law](#) 📌 4185

Where, after hearing on motion for preliminary injunctive relief was set, defendants moved to dismiss the complaint for failure to state a claim and where the district court, after beginning the proceeding as a hearing on a preliminary injunction, expanded the proceeding to consider arguments on the motion to dismiss and then treated the motion to dismiss as a motion for summary judgment and granted summary judgment for defendants without giving plaintiffs the required ten-day notice and an opportunity to present additional material, district court's procedure was an abuse of discretion. [Underwood v. Hunter, C.A.5 \(Ala.\) 1979, 604 F.2d 367. Summary Judgment](#) 📌 278(2)

Brief filed by prisoners in response to motion to dismiss their civil rights complaints did not constitute type of meaningful opposition contemplated by this rule, and where prisoners were given no notice of district court's intention to treat motion to dismiss as one for summary judgment, and submitted from their jail cells pro se typewritten statements of ambiguous import, district court erred in entering summary judgment against them on the ground that they had submitted brief in support of their position subsequent to motion to dismiss. [Winfrey v. Brewer, C.A.8 \(Iowa\) 1978, 570 F.2d 761. Summary Judgment](#) 📌 291

Cross motion for dismissal of complaint for insufficiency on its face is not necessarily to be treated as motion for summary judgment, at least where all parties are not given full opportunity to present pertinent material dehors the pleadings. [Lowenschuss v. Kane, C.A.2 \(N.Y.\) 1975, 520 F.2d 255, on remand 72 F.R.D. 498. Summary Judgment](#) 📌 279

Where, after defendants requested that their motions to dismiss be treated as summary judgment motions and after plaintiffs asked for time to submit affidavits, trial court recessed hearing without ruling on either request and on next day filed a "Summary Judgment, with Findings" wherein the court said that it was treating the motions to dismiss as motions for summary judgment, that the defense affidavits were unopposed and that summary judgment for defendant was granted, action of trial court deprived plaintiffs of adequate opportunity to be heard and denied them the right to present controverting material and the right to amend in violation of spirit and mandates of applicable rules, and thus the grant of summary judgment was improper. [In re Tamasha Town and Country Club, C.A.9 \(Cal.\) 1973, 483 F.2d 1377.](#)

To consider a motion to dismiss as a motion for summary judgment without giving adverse party an opportunity to present pertinent material is error. [Adams v. Campbell County School Dist., C.A.10 \(Wyo.\) 1973, 483 F.2d 1351. Summary Judgment](#) 📌 278(2)

In class action wherein plaintiff alleged employment discrimination under Civil Rights Act of 1964, § 2000e et seq. of Title 42, it was error to treat defendant's motion to dismiss as a motion for summary judgment without first giving plaintiff at least ten days' notice as required by rules, and it was error to base suppression of plaintiff's interrogatories on defendant's vague and conclusory objections. [Scott v. Courtesy Inns, Inc., C.A.5 \(Miss.\) 1973, 472 F.2d 563. Federal Civil Procedure](#) 📌 1483; [Summary Judgment](#) 📌 278(2)

While a court may transform a motion to dismiss for failure to state a claim into a summary judgment motion if the parties submit evidence beyond the pleadings, such action is inappropriate unless the parties are given notice and an opportunity to respond appropriately. [Weizmann Institute of Science v. Neschis, S.D.N.Y.2002, 229 F.Supp.2d 234. Summary Judgment](#) 📌 278(2)

Defendant's motion to dismiss or, in alternative, for summary judgment could be converted to one for summary judgment without further notice to plaintiff, where plaintiff presented factual evidence outside pleadings in response to motion and did not request more time to marshal evidence in response to motion. [Santoni v. Potter, D.Me.2002, 222 F.Supp.2d 14, affirmed 369 F.3d 594. Summary Judgment](#) 📌 278(2)

Before district court may convert motion to dismiss for failure to state claim on which relief can be granted into motion for summary judgment, parties must receive reasonable opportunity to present all pertinent material. [Orangeburg Pecan Co., Inc. v. Farmers Inv. Co., D.S.C.1994, 869 F.Supp. 351, supplemented 869 F.Supp. 359. Summary Judgment](#) 📌 278(2)

Defendant was provided sufficient notice that motion to dismiss would be treated as one for summary judgment with respect to defendant's counterclaim and was provided sufficient opportunity to submit additional materials to justify treating motion as one for summary judgment, considering that motion requested summary judgment as alternative to dismissal, that motion was pending for nearly two months since oral argument, that defendant did not request leave to file any additional sworn submissions since oral argument, and that defendant in fact relied on information contained in matter outside pleadings. [Tonka Corp. v. Rose Art Industries, Inc., D.N.J.1993, 836 F.Supp. 200, 29 U.S.P.Q.2d 1801. Summary Judgment](#) 🏠 278(2)

Court may not consider matters submitted outside pleading in motion to dismiss for failure to state claim unless notice is given to all parties that motion is being converted to summary judgment motion and parties are afforded reasonable opportunity to present additional pertinent material. [Cruz v. Robert Abbey, Inc., E.D.N.Y.1991, 778 F.Supp. 605. Federal Civil Procedure](#) 🏠 1832

Parties were fairly apprised that district court would look beyond pleadings when deciding motion denominated as one to dismiss for failure to state claim, where plaintiff's counsel at status conference urged district court to recognize that motion was really motion for summary judgment, counsel for defendants did not dispute this characterization of motion, and both parties submitted material outside pleadings in their briefs on matter. [Intermedics, Inc. v. Ventritex, Inc., N.D.Cal.1991, 775 F.Supp. 1258, 20 U.S.P.Q.2d 1414. Summary Judgment](#) 🏠 278(2)

---- Notice to pro se litigants, dismissal, motions treated as summary judgment motions

Inmate, proceeding pro se, did not suffer deprivation of substantial rights when district court decided summary judgment motion, filed by corporation that operated prison and various officials, on the merits in inmate's [§ 1983](#) action, alleging violations of the Eighth Amendment, and therefore, court's error in providing late notice of requirements and consequences of summary judgment was harmless; inmate filed response to motion, response included inmate's detailed declaration, which included citations to and quotes from legal authorities and summary judgment rule, inmate complied with local rule requirements, he attached exhibits and cited materials defendants provided in discovery, and inmate also attached sworn affidavits from four other inmates. [Labatad v. Corrections Corp. of America, C.A.9 \(Ariz.\) 2013, 714 F.3d 1155. Federal Courts](#) 🏠 3705(3)

When district court transforms a dismissal into a summary judgment proceeding, it must inform a plaintiff who is proceeding pro se that it is considering more than the pleadings and must afford a reasonable opportunity to present all pertinent material; when pro se litigant is prisoner, district court must also tell prisoner about his right to file counter-affidavits or other responsive materials and must alert him to fact that his failure to do so might result in entry of summary judgment against him. [Anderson v. Angelone, C.A.9 \(Nev.\) 1996, 86 F.3d 932. Summary Judgment](#) 🏠 278(2)

Successor fund's motion to dismiss, for failure to state a claim, pro se ERISA complaint appealing denial of application for pension benefits, on grounds that complaint was untimely, complainant failed to exhaust her administrative remedies, and complainant was not entitled to pension benefits under terms of relevant plans, would be considered as motion for summary judgment, where complainant was made aware that court might treat motion as such and was warned that her case might be dismissed if she did not submit proof rebutting showing made by fund in support of motion. [Morillo v. 1199 SEIU Benefit and Pension Funds, S.D.N.Y.2011, 783 F.Supp.2d 487. Summary Judgment](#) 🏠 278(2)

Magistrate Judge properly treated defendant's motion to dismiss or for summary judgment as a motion for summary judgment, where plaintiff was on notice that defendant was moving for summary judgment as an alternative and two evidentiary exhibits were attached to the motion. [Nasious v. Two Unknown B.I.C.E. Agents at Arapahoe County Justice Center, D.Colo.2009, 657 F.Supp.2d 1218, affirmed 366 Fed.Appx. 894, 2010 WL 582636. Federal Civil Procedure](#) 🏠 1832; [Summary Judgment](#) 🏠 278(2)

Taken together, rule governing motions to dismiss and summary judgment rule require that if a district court considers matters outside of the pleadings, it must then convert a motion to dismiss for failure to state claim to one for summary judgment and ensure that the opposing party is given proper notice of the conversion, and such notice is particularly important if

plaintiff is proceeding pro se. [McCoy v. Goord, S.D.N.Y.2003, 255 F.Supp.2d 233. Summary Judgment](#) 📌 278(2)

---- Partial summary judgment, dismissal, motions treated as summary judgment motions

Lower court, in response to motion for dismissal of regulatory claims, could grant "motion to partial summary judgment," dismissing all regulatory claims, particularly where several extrapleading matters accompanied memoranda filed by parties and thus were before the court. [McWhirter Distributing Co., Inc. v. Texaco, Inc., Em.App.1981, 668 F.2d 511. Summary Judgment](#) 📌 63

Police officer's motion to dismiss for failure to state claim arrestees' claims in § 1983 action for malicious prosecution, alleging that, inter alia, officer misrepresented in arrest affidavit what minor said during forensic interview and acted without probable cause because of evidence fabrication would be converted to motion for partial summary judgment, given that the fabrication claim likely could be determined by a comparison between video tape of the interview and the officer's affidavit. [Harasz v. Katz, D.Conn.2017, 239 F.Supp.3d 461. Federal Civil Procedure](#) 📌 1832; [Summary Judgment](#) 📌 278(2)

If matters outside pleadings are presented and considered on motion to strike, the motion shall be treated as motion for partial summary judgment and responding party should have an opportunity to conduct discovery and present evidence in opposition to motion. [U.S. Oil Co., Inc. v. Koch Refining Co., E.D.Wis.1981, 518 F.Supp. 957. Summary Judgment](#) 📌 63

When both parties have submitted evidence outside the pleadings in briefing a motion to strike, the court may treat the motion as one for partial summary judgment pursuant to the summary judgment rule. [S.E.C. v. Alexander, E.D.N.Y.2007, 248 F.R.D. 108. Summary Judgment](#) 📌 278(1)

---- Matters outside pleadings, dismissal, motions treated as summary judgment motions

District court abused its discretion when it considered matter outside pleadings, i.e., administrative record suggesting that charitable foundation funded terrorism, without converting foundation's motion to dismiss to motion for summary judgment, in reviewing Treasury Department's designation of foundation as Specially Designated Global Terrorist (SDGT), pursuant to Executive Order issued under International Emergency Economic Powers Act (IEEPA). [Holy Land Foundation for Relief and Development v. Ashcroft, C.A.D.C.2003, 333 F.3d 156, 357 U.S.App.D.C. 35, rehearing and rehearing en banc denied, certiorari denied 124 S.Ct. 1506, 540 U.S. 1218, 158 L.Ed.2d 153. Federal Civil Procedure](#) 📌 1832; [Summary Judgment](#) 📌 278(2)

In determining whether employee stated cause of action under FMLA in his second amended complaint, district court could not, without converting employer's motion to dismiss into motion for summary judgment, consider facts included in prior complaints but not referenced in second amended complaint. [Kelley v. Crosfield Catalysts, C.A.7 \(Ill.\) 1998, 135 F.3d 1202. Federal Civil Procedure](#) 📌 1832

Plaintiff who submitted material beyond pleadings in opposition to defendants' dismissal motion was not in position to claim unfair surprise or inequity after court converted motion into one for summary judgment. [Arnold v. Air Midwest, Inc., C.A.10 \(Kan.\) 1996, 100 F.3d 857. Summary Judgment](#) 📌 278(2)

Motion to dismiss for failure to state a claim on which relief can be granted must be treated as a motion for summary judgment if either party to motion submits materials outside the pleadings in support or opposition to the motion, and if district court relies on those materials. [Anderson v. Angelone, C.A.9 \(Nev.\) 1996, 86 F.3d 932. Federal Civil Procedure](#) 📌 1832; [Summary Judgment](#) 📌 278(2)

On motion to dismiss for failure to state a claim, if matters outside complainant's pleading are presented to court, motion shall be treated as one for summary judgment. [Advanced Cardiovascular Systems, Inc. v. Scimed Life Systems, Inc., C.A.Fed. \(Minn.\) 1993, 988 F.2d 1157, 26 U.S.P.Q.2d 1038, rehearing denied, in banc suggestion declined. Summary Judgment](#) 📌 278(2)

Only if it appears that district court did rely on matters outside pleadings should appellate court treat dismissal for failure to state a claim as summary judgment. [Fernandez-Montes v.](#)

[Allied Pilots Ass'n, C.A.5 \(Tex.\) 1993, 987 F.2d 278. Summary Judgment 🏠 278\(2\)](#)

District court should have treated motion to dismiss as one for summary judgment, where it relied on materials outside of complaint to dispose of at least some claims. [Miller v. Glanz, C.A.10 \(Okla.\) 1991, 948 F.2d 1562. Summary Judgment 🏠 278\(2\)](#)

Motions to dismiss would be treated on appeal as motions for summary judgment, where matters outside pleadings were presented to and not excluded by district judges. [Farley v. Henderson, C.A.9 \(Ariz.\) 1989, 883 F.2d 709. Federal Courts 🏠 3604\(4\)](#)

Where evidence outside record is submitted to and not excluded by district court, motion to dismiss for failure to state claim upon which relief can be granted must be disposed of by way of summary judgment procedures specified in this rule. [Clipper Express v. Rocky Mountain Motor Tariff Bureau, Inc., C.A.9 \(Cal.\) 1982, 690 F.2d 1240, certiorari denied 103 S.Ct. 1234, 459 U.S. 1227, 75 L.Ed.2d 468. See, also, Clipper Express v. Rocky Mountain Motor Tariff Bureau, Inc., C.A.9 \(Cal.\) 1982, 674 F.2d 1252, republished 690 F.2d 1240; Torres v. First State Bank of Sierra County, C.A.N.M.1977, 550 F.2d 1255; Plante v. Shivar, C.A.N.C.1976, 540 F.2d 1233; Clark v. Volpe, C.A.W.Va.1973, 481 F.2d 634; Devex Corp. v. General Motors Corp., D.C.Del.1984, 579 F.Supp. 690, affirmed 746 F.2d 1466, affirmed 746 F.2d 1468, affirmed 746 F.2d 1469, 222 U.S.P.Q. 22; Moss v. Morgan Stanley Inc., S.D.N.Y.1983, 553 F.Supp. 1347, affirmed 719 F.2d 5, certiorari denied 104 S.Ct. 1280, 465 U.S. 1025, 79 L.Ed.2d 684; Chambers v. McLean Trucking Co., Inc., M.D.N.C. 1981, 550 F.Supp. 1335; Crumacker v. Farrell, N.D.Ind.1981, 516 F.Supp. 276. Summary Judgment 🏠 278\(2\)](#)

Assuming plaintiff's action was barred by res judicata, motion to dismiss for failure to state a claim upon which relief could be granted was properly treated as a motion for summary judgment since matters outside pleadings were considered and the action was properly dismissed under this rule. [Ellingson v. Burlington Northern, Inc., C.A.9 \(Cal.\) 1981, 653 F.2d 1327. Summary Judgment 🏠 278\(2\)](#)

Where, before dismissal of amended complaint, matters outside pleadings were presented to and not excluded by trial court, dismissal of action constituted disposition as summary judgment, and should not have been granted in absence of showing that there was no right of plaintiff to recover under any discernible circumstances. [Minnesota Bearing Co. v. White Motor Corp., C.A.8 \(Minn.\) 1973, 470 F.2d 1323. Federal Civil Procedure 🏠 1827.1](#)

Though defendants did not file cross motion for summary judgment, order purporting to grant their motion to dismiss would be treated as one granting summary judgment for defendants where matters outside the pleading were presented to and not excluded by the court and all parties had notice of the issues. [Alaska Northwest Pub. Co. v. A. T. Pub. Co., C.A.9 \(Alaska\) 1972, 458 F.2d 387, 173 U.S.P.Q. 3. Summary Judgment 🏠 278\(2\)](#)

Motion to dismiss complaint which was supported by facts outside pleadings should have been treated as a motion for summary judgment which should not have been granted if there were any genuine issues as to any material facts. [Smith v. Blackledge, C.A.4 \(N.C.\) 1971, 451 F.2d 1201. Summary Judgment 🏠 45\(1\); Summary Judgment 🏠 278\(2\)](#)

Where warden submitted in support of his motion to dismiss habeas corpus case matters which were outside pleadings but which were not excluded by district court, motion must be treated as one for summary judgment. [Schnepf v. Hocker, C.A.9 \(Nev.\) 1970, 429 F.2d 1096. Habeas Corpus 🏠 801; Summary Judgment 🏠 278\(2\)](#)

Although trial court dismissed complaint for failure to state claim on which relief could be granted, its action was in the nature of summary judgment on the merits since matters outside pleadings were considered. [Zelechower v. Younger, C.A.9 \(Cal.\) 1970, 424 F.2d 1256, certiorari denied 91 S.Ct. 102, 400 U.S. 865, 27 L.Ed.2d 104. Summary Judgment 🏠 278\(2\)](#)

If affirmative defense is based upon matters outside complaint and is raised by motion to dismiss for failure to state a claim, court must consider motion as one for summary judgment in order to consider evidentiary matters outside complaint. [Miller v. Shell Oil Co., C.A.10 \(N.M.\) 1965, 345 F.2d 891. Summary Judgment 🏠 278\(2\)](#)

District court would decline to consider court records from other excessive force actions that were cited in complaint, in deciding motion to dismiss for failure to state a claim in §

[1983](#) action brought by administrator of estate of detainee who died from gunshot wound sustained during seizure by law enforcement, alleging various claims against city, counties, county sheriff's offices, and law enforcement officers, including excessive force in violation of the Fourth Amendment; a determination of whether alleged instances of misconduct in other actions were meritorious and substantially similar was more appropriate for summary judgment. [Estate of Holmes by and through Couser v. Somers, D.Kan.2019, 387 F.Supp.3d 1233](#), affirmed [959 F.3d 1018](#). [Federal Civil Procedure](#) 📖 [1832](#)

District court was able to consider numerous documents and videos in deciding motion to dismiss for failure to state a claim without converting it into a motion for summary judgment, in civil rights action brought by public university festival attendee against governing body of state's public university system and others affiliated with university, alleging, inter alia, violation of attendee's right to free speech under the First Amendment; complaint referenced and incorporated the documents and videos, and attendee did not dispute the authenticity of documents and videos. [Spears v. Arizona Board of Regents, D.Ariz.2019, 372 F.Supp.3d 893](#). [Federal Civil Procedure](#) 📖 [1832](#); [Summary Judgment](#) 📖 [278\(2\)](#)

Defendant submitted materials outside of the complaint, namely, a declaration attaching portions of the administrative record, and thus, District Court would treat defendant's motion to dismiss plaintiff's complaint as one for summary judgment; although Court did not give parties notice of its intent to convert defendant's motion into one for summary judgment, neither side had been prejudiced, as relevant facts were undisputed, defendant's motion presented a question of law, and plaintiff had full opportunity to respond to defendant's submissions. [Gunderson v. BNSF Ry. Co., D.Minn.2014, 29 F.Supp.3d 1259](#). [Federal Civil Procedure](#) 📖 [1832](#); [Summary Judgment](#) 📖 [278\(2\)](#)

District court would treat federal employer's motion for summary judgment, in employment discrimination action, as renewed motion for summary judgment, rather than motion to dismiss, since both parties presented materials outside pleadings that pertained to former employee's claims, and employee's opposing points and authorities incorporated his previously filed statement of material facts, his previous opposition brief, and his previously filed opposition brief appendix, which included, among other things, his medical records and excerpts of depositions taken at administrative level. [Klute v. Shinseki, D.D.C.2012, 840 F.Supp.2d 209](#). [Summary Judgment](#) 📖 [365](#)

Court would convert defendant's motion to dismiss in [§ 1983](#) action into a motion for summary judgment, where defendant relied upon the statements of plaintiff's counsel, which were materials outside the pleadings. [Kregler v. City of New York, S.D.N.Y.2011, 770 F.Supp.2d 602](#), subsequent determination [821 F.Supp.2d 651](#), affirmed [604 Fed.Appx. 44, 2015 WL 1381429](#). [Summary Judgment](#) 📖 [278\(2\)](#)

Motion to dismiss would be converted to one for summary judgment, even though moving defendant did not submit a statement of undisputed material facts pursuant to a local rule; its submission of two declarations invited the court to look outside the pleadings to decide the motion, and the plaintiff was not prejudiced by conversion of the motion, as the majority of her opposition was devoted to arguing in the alternative that relief was inappropriate under the summary judgment rule as well. [Schnur v. CTC Communications Corp. Group Disability Plan, S.D.N.Y.2008, 621 F.Supp.2d 96](#). [Summary Judgment](#) 📖 [278\(2\)](#)

Court would not consider unauthenticated copy of corporate charter, in support of motion to dismiss claim that exculpatory provision in charter barred assertion of corporate waste claim against corporate directors; charter copy was document outside of pleadings, not to be considered in dismissal context, and court would not convert motion into one for summary judgment, as parties had not been warned of court's intent to do so. [Grogan v. O'Neil, D.Kan.2003, 292 F.Supp.2d 1282](#), subsequent determination [307 F.Supp.2d 1181](#). [Federal Civil Procedure](#) 📖 [1832](#); [Summary Judgment](#) 📖 [278\(2\)](#)

Motion seeking dismissal of [§ 1983](#) claims against sheriff based on qualified immunity defense was properly treated as one for summary judgment where materials outside the pleadings submitted by the parties were not excluded. [Whiting v. Tunica County, N.D.Miss.2002, 222 F.Supp.2d 809](#). [Civil Rights](#) 📖 [1376\(2\)](#)

In case in which defendant seeks dismissal based on documents outside pleadings and plaintiff opposes that effort in same manner, motion to dismiss is converted into motion for summary judgment when jurisdictional issue is so bound up with merits that full trial on

merits may be necessary to resolve issue. [Calderon v. U.S.](#), N.D.Ill.1996, 923 F.Supp. 127, affirmed 123 F.3d 947. [Federal Courts](#) 📌 2080; [Summary Judgment](#) 📌 278(2)

If evidence outside pleadings is considered, motion to dismiss should be treated as motion for summary judgment. [Trauma Service Group v. Keating](#), E.D.Pa.1995, 907 F.Supp. 110. [Federal Civil Procedure](#) 📌 1832; [Summary Judgment](#) 📌 278(2)

Motion to dismiss could properly be considered motion for summary judgment where parties had presented materials to court outside pleadings. [Maxwell v. K Mart Corp.](#), D.Minn.1994, 851 F.Supp. 1343, 30 U.S.P.Q.2d 1593. [Summary Judgment](#) 📌 278(2)

Defendants' motion for reconsideration of order denying motion to dismiss was more properly viewed as separate motion for summary judgment than motion for reconsideration or motion to dismiss, where it relied upon matters outside of pleadings. [Edens v. Laubach](#), D.Kan.1993, 838 F.Supp. 510. [Summary Judgment](#) 📌 278(1)

If material outside pleadings has been offered to accompany motion to dismiss, court may either exclude additional material and decide motion based upon complaint alone, or court may treat motion to dismiss as motion for summary judgment. [Cincinnati Ins. Co. v. Hertz Corp.](#), S.D.Ohio 1991, 776 F.Supp. 1235. [Federal Civil Procedure](#) 📌 1832; [Summary Judgment](#) 📌 278(2)

Whether claims in prior Australian action and current action both arose out of same transaction or series of connected transactions and whether requirements of comity had been met were legal questions which could only be determined based on facts outside pleading and were more appropriately resolved by summary judgment; therefore, Australian manufacturer's motion to dismiss, on basis of res judicata, United States distributor's action alleging tortious interference with contract and conspiracy to cause distributor economic damage by driving it from the marketplace would be treated as motion for summary judgment. [Phillips USA, Inc. v. Allflex USA, Inc.](#), D.Kan.1993, 150 F.R.D. 198.

--- Affidavits, dismissal, motions treated as summary judgment motions

In product's liability action, district court effectively converted alleged manufacturer's motion to dismiss into one for summary judgment by accepting affidavit of manufacturer's general counsel stating that a subsidiary company manufactured and sold product in question. [Hernandez-Santiago v. Ecolab, Inc.](#), C.A.1 (Puerto Rico) 2005, 397 F.3d 30. [Summary Judgment](#) 📌 278(2)

Once a motion to dismiss has been converted to a motion for summary judgment, statements in the pleadings cannot create a factual dispute when the movant has produced affidavit which contain factual allegations contrary to the pleadings and which establish its entitlement to judgment as a matter of law. [Nichols v. U.S.](#), C.A.10 (N.M.) 1986, 796 F.2d 361. [Summary Judgment](#) 📌 278(2)

Court of Appeals would consider record on appeal included undisputed statements of fact appearing in affidavits submitted in support of or in opposition to defendant's motion to dismiss, where plaintiff had requested that district court treat defendant's motion as motion for summary judgment and both parties had a reasonable opportunity to, and did in fact present materials pertinent to proceedings under [Federal Civil Rule 56](#); it was proper to treat the motion for judgment on the pleadings under [Federal Civil Rule 12\(c\)](#) as one for summary judgment. [Republic Steel Corp. v. Pennsylvania Engineering Corp.](#), C.A.7 (Ill.) 1986, 785 F.2d 174. [Federal Courts](#) 📌 3542

Where court considered affidavit on motion to dismiss, motion would be treated as one for summary judgment. [Hoitt v. Vitek](#), C.A.1 (N.H.) 1974, 497 F.2d 598. See, also, [U.S. ex rel. Tyrrell v. Speaker](#), C.A.Pa.1973, 471 F.2d 1197, on remand 394 F.Supp. 9; [Gautreaux v. Romney](#), C.A.Ill.1971, 448 F.2d 731; [Ellis v. Carter](#), C.A.Cal.1961, 291 F.2d 270; [Smallwood v. U.S.](#), D.C.Mo.1973, 358 F.Supp. 398, affirmed 486 F.2d 1407; [Bucha v. Illinois High School Ass'n](#), D.C.Ill.1972, 351 F.Supp. 69; [Brad Ragan, Inc. v. Bandag Inc.](#), D.C.N.C.1972, 341 F.Supp. 884; [Fabian v. Baltimore & O.R. Co.](#), D.C.Ohio 1970, 320 F.Supp. 573; [Eskimo Pie Corp. v. Whitelawn Dairies, Inc.](#), D.C.N.Y.1967, 266 F.Supp. 79. [Summary Judgment](#) 📌 278(2)

Where matters outside pleadings were considered on bank's motion to dismiss borrower's action to have cancelled written negotiable instruments issued by borrower as evidence of his indebtedness to bank for loans, motion to dismiss was, in effect, a motion for summary

judgment and borrower's affidavit opposing motion should have been considered in testing sufficiency of his pleadings. [Freeman v. Marine Midland Bank-New York, C.A.2 \(N.Y.\) 1974, 494 F.2d 1334](#), on remand [419 F.Supp. 440](#). [Summary Judgment](#) 🗝️ 278(2); [Summary Judgment](#) 🗝️ 310

Where facts before court on defendant's motion for summary judgment were those contained in complaint and plaintiff's opposing affidavit which were insufficient to show cause of action, court properly granted summary judgment rather than dismissal. [Hubicki v. ACF Industries, Inc., C.A.3 \(Pa.\) 1973, 484 F.2d 519](#). [Summary Judgment](#) 🗝️ 313(1)

District Court would convert physician's motion to dismiss for failure to state claim into motion for summary judgment in prisoner's pro se § 1983 action, where physician sought dismissal based on identity of defendant, resolution of such issue required Court to consider affidavit submitted by physician that was not mentioned in complaint or pleadings, physician had notified prisoner of his request that motion be converted, and prisoner had had opportunity to submit papers demonstrating that physician was correct defendant. [Baez v. Kahanowicz, S.D.N.Y.2007, 469 F.Supp.2d 171](#), affirmed [278 Fed.Appx. 27, 2008 WL 2073897](#). [Summary Judgment](#) 🗝️ 278(2)

District court would treat motion to dismiss for failure to state claim as motion for summary judgment, where discovery in case was nearly complete and affidavits were submitted. [Mann by Parent v. Meachem, N.D.N.Y.1996, 929 F.Supp. 622](#). [Federal Civil Procedure](#) 🗝️ 1825; [Summary Judgment](#) 🗝️ 278(2)

Motion to dismiss was converted to motion for summary judgment where affidavits appended to motion by defendants and to objection to motion by plaintiff would be considered by court in deciding motion. [Dudley v. Business Exp., Inc., D.N.H.1994, 882 F.Supp. 199](#). [Federal Civil Procedure](#) 🗝️ 1833; [Summary Judgment](#) 🗝️ 278(2)

Court considered information contained in affidavits and exhibits presented in connection with motions to dismiss, and thus motions were converted to motions for summary judgment. [Yoonessi v. State University of New York, W.D.N.Y.1994, 862 F.Supp. 1005](#), leave to appeal denied [56 F.3d 10](#), certiorari denied [116 S.Ct. 779, 516 U.S. 1075, 133 L.Ed.2d 730](#). [Summary Judgment](#) 🗝️ 278(2)

Normally when parties have submitted and court has considered materials outside the pleadings, court will consider defendant's motion to dismiss for failure to state a claim as motion for summary judgment, but where plaintiffs responded to motion to dismiss in good faith, court would not treat motion as one for summary judgment by considering defense rebuttal affidavit without giving plaintiffs benefit of responding to the affidavit, and thus would not consider the affidavit and would treat motion as true motion to dismiss. [Wesley v. Mississippi Transp. Com'n, S.D.Miss.1994, 857 F.Supp. 523](#). [Federal Civil Procedure](#) 🗝️ 1825; [Federal Civil Procedure](#) 🗝️ 1832; [Summary Judgment](#) 🗝️ 278(2)

Where defendant in securities misrepresentations and omissions suit filed motion to dismiss and submitted affidavit in support of its contentions that plaintiff failed to state claim upon which relief could be granted and that federal district court had no jurisdiction over defendant, matters submitted would be considered as motions for summary judgment. [Jordan v. Global Natural Resources, Inc., S.D.Ohio 1983, 564 F.Supp. 59](#). [Summary Judgment](#) 🗝️ 278(2)

Because both sides submitted affidavits and exhibits with their memoranda concerning defendant's motion to dismiss for failure to state claim, court would treat motion as one for summary judgment. [Cargill Ferrous Intern. v. M/V Elikon, N.D.Ill.1994, 154 F.R.D. 193](#). [Summary Judgment](#) 🗝️ 278(2)

---- Depositions, dismissal, motions treated as summary judgment motions

When trial court in ruling on motion to dismiss takes into consideration depositions and other information outside the pleadings, the grant of the motion is treated as summary judgment. [Bossard v. Exxon Corp., C.A.5 \(La.\) 1977, 559 F.2d 1040](#), rehearing denied [564 F.2d 97](#), certiorari denied [98 S.Ct. 1510, 435 U.S. 934, 55 L.Ed.2d 532](#). [Summary Judgment](#) 🗝️ 278(2)

Where defendants attached copies of transcripts from depositions and relevant documents to motions to dismiss, plaintiff had ample and reasonable notice that motions were actually

summary judgment motions and that court might treat motions accordingly. [Reynolds v. Mercy Hosp.](#), W.D.N.Y.1994, 861 F.Supp. 214. [Summary Judgment](#) 📄 278(2)

Where deposition testimony was not excluded but was expressly referred to by court in order, motion to dismiss should have been more appropriately considered as one for summary judgment. [Franks v. Thomason](#), N.D.Ga.1980, 4 B.R. 814. [Summary Judgment](#) 📄 278(2)

---- Exhibits, dismissal, motions treated as summary judgment motions

District court's dismissal of action would be treated as dismissal for failure to state claim, and thus, court did not commit reversible error in failing to comply with summary judgment rule by providing all parties reasonable opportunity to present relevant material, even though district court considered exhibits consisting of state administrative hearing records relating to unemployment benefits denial that movant had requested court take judicial notice of. [Mack v. South Bay Beer Distributors, Inc.](#), C.A.9 (Cal.) 1986, 798 F.2d 1279. [Federal Courts](#) 📄 3693

Where defendant filed, with various attached exhibits, motion to dismiss for failure to state a claim, plaintiff responded to motion and also attached exhibits, and court considered all of documents in rendering its decision, motion to dismiss was converted into summary judgment motion necessitating all procedural safeguards of this rule. [Finn v. Gunter](#), C.A.11 (Fla.) 1984, 722 F.2d 711. [Summary Judgment](#) 📄 278(2)

In resolving a motion to dismiss for failure to state a claim, a court may consider documents attached to the complaint as an exhibit or incorporated in it by reference, matters of which judicial notice may be taken, or documents either in plaintiffs' possession or of which plaintiffs had knowledge and relied on in bringing suit, and this does not convert the motion into a motion for summary judgment. [Weizmann Institute of Science v. Neschis](#), S.D.N.Y.2002, 229 F.Supp.2d 234. [Federal Civil Procedure](#) 📄 1832; [Summary Judgment](#) 📄 278(2)

Considering as matters outside pleadings the exhibits admitted in evidence at pretrial conference, defendant's motion to dismiss would be treated as one for summary judgment. [Chambers v. Beaunit Corp.](#), E.D.Tenn.1967, 278 F.Supp. 62, affirmed 404 F.2d 128. [Summary Judgment](#) 📄 278(2)

Motion to dismiss for failure to state a claim upon which relief could be granted would be treated as one for summary judgment, since the parties submitted exhibits and affidavits outside the pleadings, which the court considered. [Johnson v. Jumelle](#), S.D.N.Y.1974, 64 F.R.D. 708. [Summary Judgment](#) 📄 278(2)

---- Interrogatories, dismissal, motions treated as summary judgment motions

Concurrent filing of sworn-to answers to interrogatories with motion to dismiss had effect, under this rule, of turning motion to dismiss into motion for summary judgment. [Scanwell Laboratories, Inc. v. Thomas](#), C.A.D.C.1975, 521 F.2d 941, 172 U.S.App.D.C. 281, certiorari denied 96 S.Ct. 1507, 425 U.S. 910, 47 L.Ed.2d 761. [Summary Judgment](#) 📄 278(2)

---- Judicial notice, dismissal, motions treated as summary judgment motions

District court's consideration of background information as to action against government relating to Hurricane Katrina floodwater damage, including facts from amended complaint and government publication which provided timeline and facts surrounding certain relevant legislation, did not require conversion of government's motion to dismiss into motion for summary judgment, so as to permit continuance to permit further discovery, as such information was subject to judicial notice and was not outside the pleadings. [In re Katrina Canal Breaches Consol. Lit.](#), E.D.La.2008, 533 F.Supp.2d 615, new trial denied 2008 WL 4185869. [Evidence](#) 📄 2864; [Federal Civil Procedure](#) 📄 1832; [Summary Judgment](#) 📄 278(2); [Summary Judgment](#) 📄 345

Generally, district court may take judicial notice of facts outside pleadings without converting motion to dismiss into one for summary judgment only when facts are properly object of "strict" notice; facts properly held object of judicial notice in context of motion to dismiss include, among others, records and reports of administrative bodies, items in record of case or matters of general public record, and copies of document attached to

complaint as exhibit. [Intermedics, Inc. v. Ventritex, Inc., N.D.Cal.1991, 775 F.Supp. 1258, 20 U.S.P.Q.2d 1414. Summary Judgment 🔑 278\(2\)](#)

Although by taking judicial notice of nature of title insurance business and Pennsylvania regulatory statutes, 40 P.S.Pa. §§ 910-1 to 910-54, the court had discretion, on motion to dismiss complaint in antitrust case for failure to state claim, to decide whether seller charge imposed by Pennsylvania title insurers fell within the McCarran-Ferguson Act, §§ 1011 to 1015 of Title 15, exemption, the court, because it adverted to matters outside the complaint, had discretion to treat motion as a summary judgment motion and would do so as the better exercise of discretion. [Schwartz v. Com. Land Title Ins. Co., E.D.Pa.1974, 374 F.Supp. 564, supplemented 384 F.Supp. 302. Summary Judgment 🔑 278\(2\)](#)

---- Stipulations, dismissal, motions treated as summary judgment motions

Plaintiff was estopped from denying propriety of conversion of motion to dismiss to one for summary judgment on ground that state court order and stipulation, offered to establish res judicata, were incomplete and not authenticated where the plaintiff cured both defects by submitting complete and, presumptively, authenticated version of the stipulation. [Property Management & Investments, Inc. v. Lewis, C.A.11 \(Fla.\) 1985, 752 F.2d 599. Estoppel 🔑 63](#)

Motion to dismiss supplemented by stipulation could be treated as motion for summary judgment. [Holford v. Louisville & N. R. Co., W.D.Tenn.1967, 266 F.Supp. 408. Summary Judgment 🔑 278\(2\)](#)

---- Miscellaneous motions treated as summary judgment, dismissal, motions treated as summary judgment motions

Restaurant kitchen employees should have reasonably recognized that their motion for conditional certification of collective action against employer might be converted by court into one for summary judgment, supporting court's sua sponte grant of the motion; court provided adequate notice that it was considering restaurant's opposition to the motion for conditional certification as a cross-motion for summary judgment, and court invited employees to submit any additional information they deemed appropriate, so as to offer them a full and fair opportunity to meet facts outside the pleadings. [Jian Yang Lin v. Shanghai City Corp., C.A.2 \(N.Y.\) 2020, 950 F.3d 46. Labor And Employment 🔑 2374; Summary Judgment 🔑 280](#)

In business trust beneficiary's action against members of the trust's board of trustees alleging breach of fiduciary duties, district court was required to convert defendant trustees' motion to dismiss for failure to state a claim based on Massachusetts' business judgment rule into one for summary judgment; materials submitted by defendant trustees to comply with requirement of Massachusetts' statute, that the trust make a filing with the court setting forth facts showing whether a majority of the board was independent, fell outside the bounds of what the federal court could properly consider on trustees' motion to dismiss, and the district court had to examine those materials in order to make the findings mandated by Massachusetts law as a prerequisite to dismissal. [Halebian v. Berv, C.A.2 \(N.Y.\) 2011, 644 F.3d 122, on remand 869 F.Supp.2d 420. Summary Judgment 🔑 278\(2\)](#)

Court of Appeals would review de novo district court's decision granting corporation's motion to dismiss shareholders' derivative action against it based on recommendation of a special litigation committee; although dismissal was a hybrid decision that did not have a clear analogue under federal rules, decision was most similar to summary judgment motion since focus of inquiry was not on merits of claim, but instead on whether maintenance of suit would be in corporation's best interests, and in making decision, court considered matters outside the pleadings, such as special litigation committee's report. [Booth Family Trust v. Jeffries, C.A.6 \(Ohio\) 2011, 640 F.3d 134, rehearing and rehearing en banc denied. Federal Courts 🔑 3643](#)

Motion to dismiss was properly treated as a motion for summary judgment, where the special master conducting limited jurisdictional discovery and the district court considered evidentiary materials and the jurisdictional question was intertwined with the merits. [In re Natural Gas Royalties, C.A.10 \(Wyo.\) 2009, 562 F.3d 1032, certiorari denied 130 S.Ct. 301, 558 U.S. 880, 175 L.Ed.2d 137. Summary Judgment 🔑 278\(2\)](#)

Trial Court acted appropriately in impliedly converting third-party defendant's motion to dismiss to a motion for summary judgment, where third-party defendant attached to its

motion several declarations presumptively made under penalties of perjury which placed third-party plaintiff on notice that court had option of treating motion as one for summary judgment, and third-party plaintiff had ample opportunity to present materials in opposition to third-party defendant's motion. [Rodriguez v. Fullerton Tires Corp., C.A.1 \(Puerto Rico\) 1997, 115 F.3d 81. Summary Judgment 🏠 278\(2\)](#)

In suit under federal antidiscrimination laws, defendant's motion to dismiss for want of subject matter jurisdiction was appropriately characterized as motion for summary judgment; determination of whether plaintiff qualified as "employee" under those statutes was both jurisdictional question and aspect of her substantive claim, and both parties submitted additional evidence beyond pleadings which was relied on by district court. [Wheeler v. Hurdman, C.A.10 \(Colo.\) 1987, 825 F.2d 257, certiorari denied 108 S.Ct. 503, 484 U.S. 986, 98 L.Ed.2d 501. Summary Judgment 🏠 278\(2\)](#)

District court would construe city defendants' motion to dismiss for failure to state claim, or in the alternative, for summary judgment, as motion for summary judgment, despite discharged city employee's belated complaint that additional discovery was needed in her [§ 1983](#) action arising from her termination; employee never submitted affidavit in support of claim for additional discovery, and employee failed to demonstrate that evidence she wished to discover would materially affect outcome of case. [Hamilton v. Mayor & City Council of Baltimore, D.Md.2011, 807 F.Supp.2d 331. Summary Judgment 🏠 278\(2\); Summary Judgment 🏠 344](#)

Plaintiff had adequate opportunity for discovery, and thus district court could treat motion to dismiss as motion for summary judgment; motion was captioned as motion to dismiss or, in the alternative, for summary judgment, plaintiff did not submit affidavit demonstrating need for discovery, and plaintiff did not challenge the veracity of defendant's summary judgment affidavit. [Williams v. Gyrus ACMI, Inc., D.Md.2011, 790 F.Supp.2d 410. Summary Judgment 🏠 278\(2\); Summary Judgment 🏠 310](#)

District Court would treat defendants' motion to dismiss for failure to state a claim as a motion for summary judgment, where the motion turned upon consideration of materials that were outside the scope of the pleadings, both parties effectively treated the motion as one for summary judgment, and plaintiff did not suggest either that he had been deprived of a reasonable opportunity to present all the material that was pertinent to the motion, or that he could not present facts essential to justify his opposition. [Herrion v. Children's Hosp. Nat. Medical Center, D.D.C.2011, 786 F.Supp.2d 359, affirmed 448 Fed.Appx. 71, 2011 WL 6756919. Summary Judgment 🏠 278\(2\)](#)

Court would convert individual Department of Investigation officials' motion to dismiss retired Fire Marshal's [§ 1983](#) action on grounds that officials lacked authority to prevent the alleged constitutional violation at issue into motion for summary judgment, and would defer ruling on motion, where issue of whether officials' argument was foreclosed under the law of the case doctrine would require review of parties' appellate briefs, which were not before the court. [Kregler v. City of New York, S.D.N.Y.2011, 770 F.Supp.2d 602, subsequent determination 821 F.Supp.2d 651, affirmed 604 Fed.Appx. 44, 2015 WL 1381429. Summary Judgment 🏠 278\(2\); Summary Judgment 🏠 352](#)

Given that federal employer's motion, in employment discrimination action, was in the alternative for summary judgment, and that parties had opportunity to submit materials in support and in opposition, it was not unfair to employee to treat motion as one for summary judgment. [Bowden v. Clough, D.D.C.2009, 658 F.Supp.2d 61, appeal dismissed 2010 WL 2160010. Summary Judgment 🏠 278\(1\)](#)

Summary judgment standards were applicable to state's motion to dismiss prisoner's habeas corpus petition for failure to state a claim upon which relief could be granted, where both parties presented material outside pleadings, and state gave notice to petitioner that rule governing motions for summary judgment would apply. [Tyler v. McCaughtry, E.D.Wis.2003, 293 F.Supp.2d 920. Habeas Corpus 🏠 801](#)

Motion to dismiss African-American city employee's race discrimination suit by city and its officials would be converted to motion for summary judgment, as employee had requisite notice that defendants were alternatively seeking summary judgment, and employee expressly discussed facts that went beyond allegations contained in complaint in his

opposition to defendants' motion. [Jessamy v. City of New Rochelle, New York, S.D.N.Y.2003, 292 F.Supp.2d 498. Summary Judgment](#) 🗝️ 278(2)

Medical group's motion to dismiss medical malpractice claim on the basis of the Kansas Health Care Stabilization Act would be considered as a motion for summary judgment; materials concerning the Act were submitted outside the pleading, and all parties were given reasonable opportunity to submit any relevant evidence pertaining to the Health Care Stabilization Act issue. [Bradley v. Val-Mejias, D.Kan.2002, 238 F.Supp.2d 1242, affirmed 379 F.3d 892. Summary Judgment](#) 🗝️ 278(2)

District court converted motion to dismiss into a proceeding for summary judgment in antitrust action arising from participation of two air services in a joint venture to provide civilian air support to the Military Air Command (MAC); given the complexity of factual allegations and of the fact-intensive nature of antitrust analysis, court found it necessary to consider matters outside complaint to assess claims in case. [Tower Air, Inc. v. Federal Exp. Corp., E.D.N.Y.1996, 956 F.Supp. 270. Federal Civil Procedure](#) 🗝️ 1832; [Summary Judgment](#) 🗝️ 278(2)

In action to recover for worker's death allegedly caused by radiation exposure, district court could properly convert motion to dismiss for failure to state claim against subsidiary of worker's employer into motion for summary judgment; plaintiffs were served with earlier motion to dismiss which included affidavit stating that subsidiary had been dissolved and its assets distributed 17 years earlier, and plaintiffs had sought twice to substitute employer for subsidiary, thus showing they had ample notice of, and a reasonable opportunity to meet, facts outside the pleadings. [Corcoran v. New York Power Authority, S.D.N.Y.1996, 935 F.Supp. 376. Summary Judgment](#) 🗝️ 278(2)

Shipper's motion to dismiss action brought by trucking company seeking to recover freight undercharges was converted to motion for summary judgment where both parties had relied on evidence outside pleadings in connection with motion. [Rebel Motor Freight, Inc. v. Freeman Drywall Co., W.D.Tenn.1994, 914 F.Supp. 1516. Summary Judgment](#) 🗝️ 278(2)

District Court converted motion to dismiss into motion for summary judgment to consider affidavits and other evidence that parties submitted. [New York City Friends of Ferrets v. City of New York, S.D.N.Y.1995, 876 F.Supp. 529, affirmed 71 F.3d 405. Federal Civil Procedure](#) 🗝️ 1825; [Summary Judgment](#) 🗝️ 278(2)

Motions to dismiss complaints brought under federal securities laws, Racketeer Influenced and Corrupt Organizations Act (RICO), and common law would be treated as motions for summary judgment, where material, including private placement memoranda relating to limited partnerships, had been submitted to and considered by court. [Kushner v. DBG Property Investors, Inc., S.D.N.Y.1992, 793 F.Supp. 1161. Summary Judgment](#) 🗝️ 278(2)

Where both parties had submitted material outside the pleadings and both motions, plaintiff's motion for summary judgment and defendants' motion to dismiss, required consideration of the same arguments and authorities, court would treat both motions as governed by [Federal Civil Rule 56](#), which governs summary judgment, and consider legislative history and background materials in ascertaining circumstances which existed at time federal legislation involved in action was enacted, as neither party would be prejudiced by such actions. [Winner v. Cornelius, D.C.Colo.1985, 622 F.Supp. 1153. Summary Judgment](#) 🗝️ 278(2); [Summary Judgment](#) 🗝️ 290

Where, on motion to dismiss complaint for failure to state claim upon which relief could be granted, material facts were accepted as undisputed, motion would be treated as one for summary judgment and the district court would indulge every inference favorable to plaintiffs in determining whether defendant was entitled to judgment as matter of law. [King v. Williams Industries, Inc., D.C.Mass.1983, 565 F.Supp. 321, affirmed 724 F.2d 240, certiorari denied 104 S.Ct. 2363, 466 U.S. 980, 80 L.Ed.2d 835. Summary Judgment](#) 🗝️ 75; [Summary Judgment](#) 🗝️ 278(2)

Motion to strike defendant's name from complaint, based on fact that defendant had been improperly identified and could no longer be added as party within limitations period, would be viewed as motion for summary judgment and granted on that basis. [Kuehl v. Gasway Corp., E.D.Wis.1986, 109 F.R.D. 657. Summary Judgment](#) 🗝️ 278(1)

---- **Miscellaneous motions not treated as summary judgment, dismissal, motions treated as summary judgment motions**

District court in breach of contract action did not convert employer's motion to dismiss for failure to state a claim into a motion for summary judgment by considering parties' award agreement in rendering its decision; award agreement was embraced in former employee's amended complaint, which quoted from award agreement, and award agreement was sole basis for employee's complaint. [Gorog v. Best Buy Co., Inc., C.A.8 \(Minn.\) 2014, 760 F.3d 787](#). [Federal Civil Procedure](#) 🏠 1832; [Summary Judgment](#) 🏠 278(2)

District court's error of considering administrative record suggesting that charitable foundation funded terrorism, without converting foundation's motion to dismiss to motion for summary judgment, was harmless, in proceedings reviewing foundation's designation as Specially Designated Global Terrorist (SDGT), inasmuch as evidence that foundation funded designated terrorist organization was incontrovertible, law was established that there was no constitutional right to fund terrorism, and blocking of assets thus could not have violated foundation's First or Fifth Amendment rights. [Holy Land Foundation for Relief and Development v. Ashcroft, C.A.D.C.2003, 333 F.3d 156, 357 U.S.App.D.C. 35](#), rehearing and rehearing en banc denied, certiorari denied [124 S.Ct. 1506, 540 U.S. 1218, 158 L.Ed.2d 153](#). [War And National Emergency](#) 🏠 1130; [War And National Emergency](#) 🏠 1325

Motion to dismiss for failure to state a claim was not converted to motion for summary judgment, where report of Immigration and Naturalization Service allegedly considered by district court reviewing adverse decision of Immigration and Naturalization Service regarding immigration petition was attached to complaint, and such attachments are considered as part of pleadings for all purposes, including motion to dismiss. [Solis-Ramirez v. U.S. Dept. of Justice, C.A.11 \(Fla.\) 1985, 758 F.2d 1426](#). [Summary Judgment](#) 🏠 278(2)

Bankruptcy court improperly treated debtor's motion to dismiss adversary action as a motion for summary judgment and failed to afford plaintiff a reasonable opportunity to present evidence in opposition to summary judgment, as required by this rule. [In re Bristol Industries Corp., C.A.2 \(Conn.\) 1982, 690 F.2d 26](#). [Summary Judgment](#) 🏠 278(2); [Summary Judgment](#) 🏠 304

Where defendants made motions to dismiss complaint and plaintiffs made no submission setting forth specific controverted and material facts, district court erred in treating motions as one for summary judgment and ruling thereon without benefit of any such submissions which plaintiffs could have made if a fair chance therefor had been given. [Macklin v. Butler, C.A.7 \(Ind.\) 1977, 553 F.2d 525](#). [Summary Judgment](#) 🏠 278(2)

Conversion of motion to dismiss complaint for failure to state a claim brought by entities that allegedly worked with third party to use and profit from wrongfully-transferred commercial-use boating permit into motion for summary judgment would have been inappropriate in action brought against entities by seaman, who was injured when boat exploded, alleging claims for intentional infliction of emotional distress and accounting, even though parties had submitted evidence and acknowledged that motion could have been converted; although case had been in litigation for several years, entities had recently been named in lawsuit, and thus no discovery had been conducted involving those entities in context of asserted claims, evidence submitted by parties was minimal, incomplete, and unnecessary, and entities sought dismissal of one claim on procedural grounds. [Barnes v. Sea Hawai'i Rafting, LLC, D.Hawaii 2020, 493 F.Supp.3d 972](#), affirmed [2022 WL 501582](#). [Federal Civil Procedure](#) 🏠 1832; [Summary Judgment](#) 🏠 278(2)

District court would treat summary judgment motion brought by medical device manufacturer as motion to dismiss in consumer's action against manufacturer for injuries allegedly sustained following the administration of medical device consisting of injectable substance intended to treat the loss of facial fat, although consumer failed to comply with federal summary judgment procedures, requiring affidavit establishing genuineness of exhibits, responsive statement of material facts not in dispute, and affidavit in support of additional discovery claim; consumer brought claim in state court, shortly after manufacturer removed action, it filed summary judgment motion when there had been only minimal discovery, and manufacturer made arguments of law in its motion. [Clements v. Sanofi-Aventis, U.S., Inc., D.N.J.2015, 111 F.Supp.3d 586](#). [Removal of Cases](#) 🏠 119

District court was not required to convert mortgagee's motion to dismiss for failure to state claim and for lack of jurisdiction into motion for summary judgment, in mortgagor's action

arising from foreclosure, even though court considered limited materials outside pleadings, since all questions that court considered were jurisdictional. [Terry v. First Merit National Bank](#), D.D.C.2014, 75 F.Supp.3d 499. [Federal Civil Procedure](#) 1832; [Federal Courts](#) 2080; [Summary Judgment](#) 278(2)

Digital media licensor's alternative motion for summary judgment was not ripe for decision in trademark infringement action by producer of car air fresheners; documents on which licensor relied in asserting summary judgment motion were considered by trial court in licensor's motion to dismiss for failure to state claim, producer showed what facts were sought to resist summary judgment motion and how they were to be obtained, how facts were to create issue of material fact, what effort producer's counsel had made to obtain them, and why counsel had been unsuccessful in those efforts, and licensor did not provide producer with paper discovery until eight months after expiration of deadline for producer's response to summary judgment motion. [Car-Freshner Corp. v. Getty Images, Inc.](#), N.D.N.Y.2011, 822 F.Supp.2d 167. [Summary Judgment](#) 351

While district court would rely on certain materials outside first amended complaint in § 1983 action to decide motion to dismiss on the pleading, it would not treat that motion as motion for summary judgment; documents on which district court relied were documents that a court could appropriately view as either part of public record, or as documents upon which complaint relied, and authenticity of which was not in dispute. [Mata v. Anderson](#), D.N.M.2009, 760 F.Supp.2d 1068. [Federal Civil Procedure](#) 1832; [Summary Judgment](#) 278(2)

In determining whether dismissal is warranted on forum non conveniens grounds, the district court is free to consider submissions by the parties without converting a forum non conveniens motion into a motion for summary judgment. [Overseas Media, Inc. v. Skvortsov](#), S.D.N.Y.2006, 441 F.Supp.2d 610, affirmed 277 Fed.Appx. 92, 2008 WL 1994981. [Federal Courts](#) 2987

Court's consideration of redevelopment plan, copy of which was attached to defendant's motion to dismiss, did not require court to convert motion to dismiss into one for summary judgment, particularly as document, which defendant adopted by reference in its brief, was matter of public record. [Norfolk Federation of Business Districts v. Department of Housing and Urban Development](#), E.D.Va.1996, 932 F.Supp. 730, affirmed 103 F.3d 119. [Summary Judgment](#) 278(2)

Motion of defendant judges to dismiss action under § 1983 seeking declaratory relief and injunction against enforcement of bail bond rules of federal and state courts did not convert to motion for summary judgment based upon defendants' attachment to their motion of copies of rules at issue; since rules were those being challenged as unconstitutional by plaintiffs, District Court was not required to consider any matters outside of plaintiffs' complaint. [Mounkes v. Conklin](#), D.Kan.1996, 922 F.Supp. 1501. [Federal Civil Procedure](#) 1832

When plaintiff chooses not to attach to complaint or incorporate by reference document upon which it solely relies and which is integral to complaint, defendant may produce document when attacking complaint for its failure to state claim; defendant's introduction of such document does not require motion to dismiss to be treated as one for summary judgment. [Chem-Tek, Inc. v. General Motors Corp.](#), D.Conn.1993, 816 F.Supp. 123. [Federal Civil Procedure](#) 1832

Motion to dismiss could not be treated as motion for summary judgment where there had not been oral argument on issue and defendants had set forth no facts that would be admissible in evidence. [Wolford v. Budd Co.](#), W.D.Va.1993, 149 F.R.D. 127. [Summary Judgment](#) 278(2)

Arbitration, motions treated as summary judgment motions

Customer of providers of legal and debt negotiation services came forward with sufficient evidence that she did not agree to, and did not intend to be bound by, arbitration provisions of account agreement for special purpose bank account, and thus triggered application of summary judgment standard to motion to compel arbitration by bank and processing agent for account transfers in action alleging conspiracy to provide unlicensed debt adjustment services in violation of New Jersey law, even though customer signed separate agreement with acknowledgment that she received and read account agreement, given absence from

account agreement of header lines that appeared on documents sent to customer by e-mail and customer's assertion that account agreement was only later mailed to her. [Guidotti v. Legal Helpers Debt Resolution, L.L.C., C.A.3 \(N.J.\) 2013, 716 F.3d 764](#), on remand [74 F.Supp.3d 699](#). [Alternative Dispute Resolution](#) 📌 205

Court would treat prime contractor's motion to compel arbitration as a factual attack on the court's subject-matter jurisdiction, requiring it to apply the standard applicable to a motion for summary judgment and consider evidence outside the pleadings without converting the proceeding to one for summary judgment, in subcontractor's action for breach of contract against prime contractor and surety on Federal Bureau of Prisons' contract, where court had to consider factual arguments and documents outside of the pleadings, particularly the contract at issue, to address the motions. [U.S. ex rel. TBI Investments, Inc. v. BrooAlexa, LLC, S.D.W.Va.2015, 119 F.Supp.3d 512](#). [Alternative Dispute Resolution](#) 📌 205

ERISA, motions treated as summary judgment motions

District court's decision in upholding ERISA plan administrator's denial of long-term disability (LTD) benefits to participant on limitations grounds was functional equivalent of summary judgment ruling, and therefore Court of Appeals treated it as such on appeal, where parties filed briefs on limitations issue and attached extrinsic evidence to such briefs and district court held evidentiary hearing on limitations issue; although district court's opinion did not refer to any extrinsic evidence, court's analysis of the contractual limitations clause was rather threadbare and both parties on appeal filed extensive appendices. [Engleson v. Unum Life Ins. Co. of America, C.A.6 \(Ohio\) 2013, 723 F.3d 611](#), certiorari denied [134 S.Ct. 1024, 571 U.S. 1174, 188 L.Ed.2d 119](#). [Federal Courts](#) 📌 3629(3)

It is appropriate to consider a challenge under ERISA to the denial of disability benefits as a summary judgment motion reviewing the administrative record. [Magin v. Celco Partnership, N.D.N.Y.2009, 661 F.Supp.2d 206](#). [Labor And Employment](#) 📌 691; [Summary Judgment](#) 📌 183

Forfeiture, motions treated as summary judgment motions

Government's fugitive disentitlement motion under the Civil Asset Forfeiture Reform Act (CAFRA) would be converted to a motion for partial summary judgment, in government's civil forfeiture action against funds claimed by alleged foreign shell corporation that was allegedly controlled by fugitive, so as to permit parties to conduct limited discovery and supplement the record on applicability of the fugitive disentitlement statute to corporation. [U.S. v. \\$6,976,934.65 Plus Interest, D.D.C.2007, 478 F.Supp.2d 30](#), reconsideration denied [486 F.Supp.2d 37](#). [Federal Civil Procedure](#) 📌 1264; [Summary Judgment](#) 📌 278(2)

Judgment on pleadings, motions treated as summary judgment motions

In insurer's action seeking declaration that it did not owe duty under businessowners liability policy to insured a duty to defend in underlying action, district court's failure to convert insurer's motion for judgment on the pleadings to motion for summary judgment was not harmless, and thus required reversal, where there were material fact issues, regarding whether specific type of damage alleged in underlying action fit within the policy, which required development and resolution, such that grant of judgment on the pleadings prejudiced insured by depriving it of meaningful opportunity to defend against insurer's lawsuit. [Federated Mutual Insurance Company v. Coyle Mechanical Supply Inc., C.A.7 \(Ill.\) 2020, 983 F.3d 307](#). [Federal Courts](#) 📌 3705(3)

Plaintiff was given reasonable opportunity to present pertinent material, such that defendant's motion for judgment on pleadings in fraud case was properly converted into motion for summary judgment, where plaintiff informed district court it would assume summary judgment motion covered all counts, plaintiff presented three volumes of documents in opposition to motion, and plaintiff could identify no piece of evidence it had lacked opportunity to admit. [Maruho Co., Ltd. v. Miles, Inc., C.A.1 \(Mass.\) 1993, 13 F.3d 6](#). [Summary Judgment](#) 📌 278(1)

Where only use made of letter from guarantors to lender was to show a demand made on lender to bring suit against debtor and letter was not cited to court as part of guarantors' affirmative defense of impairment of collateral, evidence was not presented to court, within [rule 12](#) of these rules stating that if on motion for judgment on pleadings matters outside pleadings are presented to court motion should be treated as one for summary judgment and disposed of accordingly, and there was no error in court's failure to consider letter in

determining motion for judgment on pleadings. [Austad v. U. S., C.A.9 \(Ariz.\) 1967, 386 F.2d 147. Federal Civil Procedure](#) 🗝️ 1054; [Summary Judgment](#) 🗝️ 278(1)

Where in consideration of plaintiff's motion for judgment in its favor on complaint on ground that defendant's answer failed to state a legal defense, matters outside pleadings, consisting of affidavits and exhibits, were presented to and not excluded by district court, motion was to be treated as one for summary judgment. [Dragor Shipping Corp. v. Union Tank Car Co., C.A.9 \(Ariz.\) 1966, 361 F.2d 43, certiorari denied 87 S.Ct. 68, 385 U.S. 831, 17 L.Ed.2d 66, motion granted 371 F.2d 722. Summary Judgment](#) 🗝️ 278(1)

In passing on unions' motion for judgment on pleadings in employers' action for enforcement of agreement's grievance procedures and arbitration provisions, court in considering only complaint and answer and refusing to admit testimony of bargaining history properly observed scope of motion, and court, in its discretion, could refuse to treat motion as one for summary judgment and decline to consider as matters outside pleadings. [A.S. Abell Co. v. Baltimore Typographical Union No. 12, C.A.4 \(Md.\) 1964, 338 F.2d 190. Federal Civil Procedure](#) 🗝️ 1054; [Summary Judgment](#) 🗝️ 278(1)

Where plaintiff filed motion for judgment on the pleadings and the defendant filed an opposition and a motion for summary judgment and the plaintiff then filed a supplemental pleading to which he attached exhibits, plaintiff's pleading would be treated as a motion for summary judgment. [Dulcy v. U. S., Ct.Cl.1960, 284 F.2d 687, 149 Ct.Cl. 153. Summary Judgment](#) 🗝️ 279

Where plaintiff moved for judgment on pleadings in tort action for injuries, and defendant moved for summary judgment on ground that plaintiff's remedy was under Workmen's Compensation Law, plaintiff's motion should have been treated as motion for summary judgment, limited to issue of whether plaintiff had right to maintain action. [Mosley v. George A. Fuller Co., C.A.5 \(Ga.\) 1957, 250 F.2d 686. Summary Judgment](#) 🗝️ 278(1)

A motion for judgment on the pleadings does not differ from a motion for summary judgment unless dehors the pleadings there are agreements or affidavits on facts placed in issue by the pleadings. [Barber v. Tadayasu Abo, C.A.9 \(Cal.\) 1951, 186 F.2d 775, certiorari denied 72 S.Ct. 39, 342 U.S. 832, 96 L.Ed. 629, certiorari denied 72 S.Ct. 40, 342 U.S. 832, 96 L.Ed. 629. Federal Civil Procedure](#) 🗝️ 1042

Magistrate, during arrestee's § 1983 action, properly construed village defendants' motion on the pleadings, or in the alternative for summary judgment as motion for summary judgment; although village defendants never filed statement of undisputed facts in support of motion, and only attached to their motion arrestee's complaint and village defendants' answer, they requested summary judgment, village defendants cited to county defendants' motion for summary judgment multiple times, and to evidence submitted by arrestee and county defendants, and arrestee made it clear in his opposition that he was considering village defendants' motion as motion for summary judgment. [Charles v. County of Nassau, E.D.N.Y.2015, 116 F.Supp.3d 107. Federal Civil Procedure](#) 🗝️ 1054; [Summary Judgment](#) 🗝️ 278(1)

Alleged infringer's motion for judgment on the pleadings was procedurally appropriate vehicle to attack validity of patents involving technology for preventing damage to underground infrastructure, without converting motion into motion for summary judgment, since patent eligibility was question of law hinging on patent claims, patent specifications attached as exhibits to complaint were reviewable as part of pleadings, no other factual matter was necessary to resolve patent eligibility, patent claims had already been construed, and no factual disputes affected analysis of patent eligibility. [CertusView Technologies, LLC v. S & N Locating Services, LLC, E.D.Va.2015, 111 F.Supp.3d 688, appeal dismissed, reconsideration denied 2016 WL 4251579, affirmed 695 Fed.Appx. 574, 2017 WL 3443246. Patents](#) 🗝️ 471

Pro se state inmate, who alleged that treatment he received from prison medical staff violated Eighth Amendment, received sufficient notice of possibility that prison defendants sought summary judgment as to each of his claims, rather than judgment on the pleadings, where defendants had moved in the alternative for both judgment on the pleadings and summary judgment on inmate's 12 claims, in support of their motions defendants had relied on submissions outside complaint, which required conversion of motion for judgment on the pleadings to one for summary judgment, defendants had advised inmate of need to file

papers and affidavits in opposition to motions to avoid dismissal, and in response, inmate had submitted an opposition to their motion for summary judgment. [Davidson v. Desai](#), W.D.N.Y.2011, 817 F.Supp.2d 166. [Summary Judgment](#) 🗝️ 278(1)

Because parties engaged in discovery and presented evidence outside pleadings for district court's consideration, court would treat employer's motion for judgment on the pleadings, or alternatively, for summary judgment, solely as motion for summary judgment in employment discrimination action. [Grosdidier v. Chairman, Broadcasting Bd. of Governors](#), D.D.C.2011, 774 F.Supp.2d 76, reconsideration denied, affirmed in part 709 F.3d 19, 404 U.S.App.D.C. 189, certiorari denied 134 S.Ct. 899, 571 U.S. 1125, 187 L.Ed.2d 775. [Summary Judgment](#) 🗝️ 278(1)

In considering defendants' motion for judgment on the pleadings, which was being treated as motion for summary judgment, district court viewed pleadings in light most favorable to plaintiff and drew all reasonable inferences in favor of plaintiff as nonmoving party. [Hotel St. George Associates v. Morgenstern](#), S.D.N.Y.1993, 819 F.Supp. 310. [Summary Judgment](#) 🗝️ 75

Motion for judgment on the pleadings could not be treated as one for summary judgment, where case had been referred to mandatory arbitration. [Mercado v. Kingsley Area Schools/Traverse City Public Schools Adult Educ. Consortium](#), W.D.Mich.1989, 727 F.Supp. 335. [Summary Judgment](#) 🗝️ 278(1)

Where motion for judgment on pleadings was essentially a challenge to the legal basis of complaint, such a challenge was more appropriately viewed as a motion to dismiss for failure to state a claim upon which relief could be granted, except for count as to which court considered materials outside the pleadings, as to which motion would be treated as one for summary judgment. [Moxley v. Vernot](#), S.D.Ohio 1982, 555 F.Supp. 554. [Federal Civil Procedure](#) 🗝️ 1825; [Summary Judgment](#) 🗝️ 278(2)

Judgment on administrative record, motions treated as summary judgment motions

ERISA insurer's motion for judgment on administrative record was to be treated as motion for summary judgment on benefits claim and thus subject to denial if there was a genuine issue of material fact. [Katzenberg v. First Fortis Life Ins. Co.](#), E.D.N.Y.2007, 500 F.Supp.2d 177. [Summary Judgment](#) 🗝️ 183

Limitation of discovery, motions treated as summary judgment motions

In patent infringement suit, defendants' request for a limitation of discovery was construed to be more in the order of a motion for partial summary judgment regarding scope of patent. [Catanzaro v. Masco Corp.](#), D.C.Del.1976, 408 F.Supp. 862, 192 U.S.P.Q. 637. [Patents](#) 🗝️ 1751

Motion in limine, motions treated as summary judgment motions

District court erred in granting summary judgment pursuant to motion in limine for exclusion of evidence since, in absence of formal motion for summary judgment and accompanying procedural protections of notice, plaintiff was under no compulsion to marshal all of evidence in support of his claims. [Bradley v. Pittsburgh Bd. of Educ.](#), C.A.3 (Pa.) 1990, 913 F.2d 1064. [Summary Judgment](#) 🗝️ 278(1)

Dismissal of hospital's counterclaim for attorney fees and expenses could not be had on plaintiff's motions in limine; plaintiff was essentially requesting that motions in limine be converted to one for summary judgment sua sponte, well past summary judgment deadline, without notice to hospital that district court was considering summary judgment and opportunity for hospital to respond and to marshal its evidence in opposition. [Gold Cross Ems, Inc. v. Children's Hospital of Alabama](#), S.D.Ga.2015, 309 F.R.D. 699. [Summary Judgment](#) 🗝️ 280

Defendant's motion in limine, which sought to exclude from trial any and all evidence of infant's death, would be construed as a motion for partial summary judgment, since the practical effect of excluding such evidence would be to eliminate plaintiffs' wrongful death claim. [Osunde v. Lewis](#), D.Md.2012, 281 F.R.D. 250. [Summary Judgment](#) 🗝️ 278(1)

Partial summary judgment, motions treated as summary judgment motions

A motion for partial summary judgment is resolved under the same standard as a motion for summary judgment. [Barnes v. County of Placer](#), E.D.Cal.2009, 654 F.Supp.2d 1066,

affirmed [386 Fed.Appx. 633, 2010 WL 2781008. Summary Judgment](#) 🏠 63

While recent trend in district was to treat motions to dismiss for failure to exhaust Title VII administrative remedies as motions to dismiss for failure to state claim, district court would treat employer's motion to dismiss Title VII failure to promote claim as motion for partial summary judgment, because resolution of motion required court to look outside pleadings. [Beckham v. National R.R. Passenger Corp., D.D.C.2009, 636 F.Supp.2d 111. Summary Judgment](#) 🏠 278(2)

A motion for summary adjudication, sometimes referred to as a motion for partial summary judgment, is governed by the same standard as a typical motion for summary judgment. [Barsamian v. City of Kingsburg, E.D.Cal.2009, 597 F.Supp.2d 1054. Summary Judgment](#) 🏠 63

Although defendant had not made formal cross-motion for summary judgment to dismiss complaint, district court was empowered to search record in connection with plaintiff's motion for partial summary judgment and, if warranted, to grant summary judgment for defendant. [First Investors Corp. v. Liberty Mut. Ins. Co., S.D.N.Y.1997, 955 F.Supp. 274, affirmed 152 F.3d 162. Summary Judgment](#) 🏠 279

Quashing of service, motions treated as summary judgment motions

Contention that plaintiff had the wrong defendant before the court because named defendant had never owned vessel on which plaintiff allegedly was working at time of injury was not the proper subject of motion to quash service of process; such contention could be raised by summary judgment motion, but the court could not transfer the motion to quash into a summary judgment motion without substantially prejudicing plaintiff's rights. [Gavelek v. Coscol Petroleum Corp., E.D.Mich.1979, 491 F.Supp. 188. Process](#) 🏠 158; [Summary Judgment](#) 🏠 32

Reconsideration, motions treated as summary judgment motions

Although styled as motion for reconsideration, civil defendant's motion would be treated as renewed motion for summary judgment, where defendant's original motion for summary judgment was denied without prejudice to allow plaintiffs to amend complaint to add factual allegations and claims, and court gave express permission to renew motion. [Fournier v. Hartford Fire Ins. Co., N.D.Ga.1994, 862 F.Supp. 357. Summary Judgment](#) 🏠 362

Relief from judgment, motions treated as summary judgment motions

After surety moved to amend summary judgment to substitute living investor in limited partnership instead of deceased investor in judgment as misnomer, and living investor treated motion to amend as one for summary judgment, rather than motion for correction of clerical error, district court had authority to treat surety's motion to amend as one for summary judgment. [Insurance Co. of North America v. Dealy, C.A.5 \(Tex.\) 1990, 911 F.2d 1096. Summary Judgment](#) 🏠 278(1)

Striking of defenses, motions treated as summary judgment motions

Where it was stipulated that defendants' motions to strike portions of complaint and to dismiss for failure to state a claim on which relief could be granted and because action was barred by California limitation statute, Code Civ.Proc. § 338, could be treated as for summary judgment, and separate trial was had on question of limitation, procedure by which court withdrew case from jury, regarded testimony and documents received at hearing as supplementing original affidavits in support of motions for summary judgment, and in disposing of such special issue of fact by summary judgment was proper. [Burnham Chemical Co. v. Borax Consol., C.A.9 \(Cal.\) 1948, 170 F.2d 569, certiorari denied 69 S.Ct. 655, 336 U.S. 924, 93 L.Ed. 1086, rehearing denied 69 S.Ct. 878, 336 U.S. 955, 93 L.Ed. 1109, motion denied 69 S.Ct. 1529, 337 U.S. 961, 93 L.Ed. 1760. Summary Judgment](#) 🏠 352

Although conversion of a motion to strike into a motion for summary judgment was not explicitly authorized by the Federal Rules of Civil Procedure, both parties clearly viewed motion as a motion for summary judgment, and thus court would treat it as such. [Paretti v. Cavalier Label Co., Inc., S.D.N.Y.1988, 702 F.Supp. 81. Summary Judgment](#) 🏠 278(1)

Motion to strike a defense is the equivalent of a motion for partial summary judgment and party opposing such a motion is thus entitled to ten days' notice. [Furman v. General Dynamics Corp., S.D.N.Y.1974, 377 F.Supp. 37. Summary Judgment](#) 🏠 63

Plaintiff's motion to strike defenses was not a summary judgment motion upon which defendant could obtain summary judgment despite lack of formal motion. [Henkin v. Rockower Bros., Inc.](#), S.D.N.Y.1966, 259 F.Supp. 202. Summary Judgment 🗝️ 278(1)

Plaintiff's motion to strike from answer a defense or, in alternative, for partial summary judgment was treated as one for partial summary judgment where there were some facts outside the pleadings which were stipulated or otherwise beyond dispute and which ought to be considered. [Ciprari v. Servicos Aereos Cruzeiro do sul, S.A. \(Cruzeiro\)](#), S.D.N.Y.1965, 245 F.Supp. 819, affirmed 359 F.2d 855. Summary Judgment 🗝️ 63; Summary Judgment 🗝️ 278(1)

Where extrapleading material had been received and considered, plaintiff's cross motion to strike affirmative defense of defendant would be treated as motion for partial summary judgment. [Looney v. Great Am. Ins. Co.](#), E.D.N.Y.1976, 71 F.R.D. 211. Summary Judgment 🗝️ 279

That motion was labeled "motion to strike" rather than "motion to dismiss" would not preclude its conversion into motion for summary judgment. [Citizens Nat. Trust and Sav. Bank of Riverside v. Munson Equipment](#), S.D.Cal.1959, 24 F.R.D. 193. Summary Judgment 🗝️ 278(2)

Injunctions, motions treated as summary judgment motions

In real estate developer's action against city and zoning board asserting, inter alia, that denial of his application for zoning waivers and variances to develop apartment building in historic district violated Fair Housing Amendments Act (FHAA), the prerequisites for converting district court's ruling denying developer's request for a preliminary injunction into a grant of summary judgment for defendants were satisfied; neither party contended that it lacked sufficient time to present its case, either in connection with preliminary injunction or application to convert, order to show cause was issued, both parties were given notice and opportunity to introduce relevant evidence, and the administrative record was provided in its entirety. [Yates Real Estate, Inc. v. Plainfield Zoning Board of Adjustment](#), D.N.J.2020, 435 F.Supp.3d 626. Civil Rights 🗝️ 1453; Summary Judgment 🗝️ 278(1)

CONSIDERATIONS GOVERNING MOTION

Facts of each case as controlling, considerations governing motion

Whether summary judgment is appropriate in any case is to be decided upon the particular facts of the case. [Sobus v. Lumbermens Mut. Cas. Co.](#), D.C.Md.1975, 393 F.Supp. 661, affirmed 532 F.2d 751. Summary Judgment 🗝️ 41

There is no general rule for determining whether a genuine issue of material fact exists in a particular case so as to preclude granting of summary judgment, and each case must depend upon its own circumstances. [Bowdle v. Automobile Ins. Co. of Hartford](#), D.C.Del.1951, 99 F.Supp. 161. Summary Judgment 🗝️ 71

Implicit in this rule is idea that there can be no blanket principle which automatically dictates when summary judgment should or should not be granted; whether summary judgment is appropriate in any case is to be decided upon the particular facts of that case. [Credit Reporting Bureau, Inc. v. Federated Dept. Stores, Inc.](#), S.D.Ohio 1974, 66 F.R.D. 117. Summary Judgment 🗝️ 41

Appearance of dispute, considerations governing motion

To avoid summary judgment, party must show factual dispute regarding viable issue. [In re Control Data Corp. Securities Litigation](#), C.A.8 (Minn.) 1991, 933 F.2d 616, certiorari denied 112 S.Ct. 438, 502 U.S. 967, 116 L.Ed.2d 457. Summary Judgment 🗝️ 77

If the formal pleadings appear to raise issues of fact, but it is apparent that there is no genuine issue of fact, summary judgment may be granted. [Schwartz v. Associated Musicians of Greater New York, Local 802, Am. Federation of Musicians of U. S. and Canada](#), C.A.2 (N.Y.) 1964, 340 F.2d 228. Summary Judgment 🗝️ 58

Mere existence of some alleged factual dispute between parties will not defeat otherwise properly supported motion for summary judgment. [Stewart v. NationaLease of Kansas City, Inc.](#), D.Kan.1996, 920 F.Supp. 1188. Summary Judgment 🗝️ 46

It is not office of this rule to preserve purely speculative issues of fact for trial, and summary judgment should not be denied merely because pleadings create appearance of dispute.

[Watson v. Southern Ry. Co.](#), D.C.S.C.1975, 420 F.Supp. 483, affirmed 542 F.2d 1170.

[Summary Judgment](#) 🗝️ 2; [Summary Judgment](#) 🗝️ 57

Summary judgment will not be denied merely because pleadings create appearance of dispute. [Transamerica Ins. Co. v. Long](#), W.D.Pa.1970, 318 F.Supp. 156. See, also, [Hicks v. Under Motor Co.](#), D.C.Pa.1971, 332 F.Supp. 118. [Summary Judgment](#) 🗝️ 58

Availability of other remedies, considerations governing motion

In action involving three-car automobile collision, court granting summary judgment to defendant insurer for failure of plaintiffs' counsel to appear in opposition to motion for summary judgment was improper where other appropriate remedies were available to enforce orders of court and to foster orderly administration of court's affairs. [St. John v. New Amsterdam Cas. Co.](#), C.A.5 (La.) 1966, 357 F.2d 327. [Summary Judgment](#) 🗝️ 171

Availability of witnesses, considerations governing motion

Fact that case might fall against a defendant because witness upon whom plaintiff relies might be unavailable at trial or might support defendant's version is no ground for saying there is no issue, and no ground for granting summary judgment. [Seaboard Sur. Co. v. Permacrete Const. Corp.](#), E.D.Pa.1952, 105 F.Supp. 349. [Summary Judgment](#) 🗝️ 43

Clarification of law, considerations governing motion

Summary judgment should be granted in those cases in which it is perfectly clear that no genuine issue of material fact remains unresolved and inquiry into facts is unnecessary to clarify application of law. [Wilson Group, Inc. v. Quorum Health Resources, Inc.](#), D.S.C.1995, 880 F.Supp. 416. [Summary Judgment](#) 🗝️ 45(2)

Summary judgment is not appropriate where inquiry into the facts is desirable to clarify the application of the law. [Wessinger v. Southern Ry. Co., Inc.](#), D.C.S.C.1977, 438 F.Supp. 1256. [Summary Judgment](#) 🗝️ 54

Proscriptions applicable to granting motion for summary judgment preclude court from deciding controverted issues of fact and court may only enter such judgment when law is clear and there are no possible material questions of fact extant that could alter decisions as matter of law. [Philadelphia Facilities Management Corp. v. Saint Paul Fire & Marine Ins. Co.](#), E.D.Pa.1974, 379 F.Supp. 780. [Summary Judgment](#) 🗝️ 45(2)

Summary judgment is not proper where inquiry into the facts is deemed desirable by the court to clarify application of the law. [Rypkema v. Bowers](#), N.D.W.Va.1974, 66 F.R.D. 564. [Summary Judgment](#) 🗝️ 13

Choice of law, considerations governing motion

Motion for partial summary judgment was proper vehicle for seeking choice-of-law ruling in action for trade secret misappropriation and breach of confidential relationship brought by Italian producer of diagnostic medical instruments against Rhode Island-based competitor and producer's former employee, who was Italian citizen; order declaring which law would govern discrete issue on misappropriation claim and all of breach of confidential relationship claim was ruling on "part of a claim or defense" that fell with scope of partial summary-judgment motion, and facts bearing on choice-of-law analysis were undisputed so issue was ripe for resolution. [Alifax Holding SpA v. Alcor Scientific Inc.](#), D.R.I.2019, 357 F.Supp.3d 147. [Summary Judgment](#) 🗝️ 63; [Summary Judgment](#) 🗝️ 260

Insurer waived its argument that Delaware, rather than Pennsylvania, law applied in determining whether underlying claims against insured developers arising from their work on several homes were covered under their commercial general liability (CGL) policies, where insurer offered no choice-of-law analysis and did not engage in any meaningful effort to identify differences between Pennsylvania and Delaware law in moving for summary judgment. [Westfield Ins. Co. v. Bellevue Holding Co.](#), E.D.Pa.2012, 856 F.Supp.2d 683, appeal dismissed. [Summary Judgment](#) 🗝️ 166

District court would not assume, at summary judgment stage, that manufacturer's commercial general liability insurer wrongfully refused to defend manufacturer in action brought by California construction company alleging that manufacturer supplied defective conveyor belt, for purpose of choice of law analysis, and thus, because such assumption was necessary to find that no actual conflict existed between Washington and California

law, court would proceed to a "most significant relationship" analysis to determine choice of law issue. [Tilden-Coil Constructors, Inc. v. Landmark American Ins. Co., W.D.Wash.2010, 721 F.Supp.2d 1007. Summary Judgment 🔑 166](#)

Choice-of-law problems did not preclude summary judgment where, on most of the issues raised, the law of the relevant jurisdictions was essentially the same and, where there were significant differences in state law, the record was sufficiently developed to enable court to determine which jurisdiction's law applied. [DuSesoi v. United Refining Co., W.D.Pa.1982, 540 F.Supp. 1260. Summary Judgment 🔑 30](#)

Discovery, considerations governing motion

District court did not abuse its discretion on insurer's motion for summary judgment in refusing to permit tort victims to conduct discovery about insurer's handling of similar policy language in past, in insurer's declaratory judgment action against insureds and tort victim to resolve outstanding stacking question with regard to automobile liability insurance policy under Missouri law, since policy at issue was unambiguous and Missouri law did not permit courts to consider extrinsic evidence in interpreting unambiguous contract. [GEICO Casualty Company v. Isaacson, C.A.8 \(Mo.\) 2019, 932 F.3d 721. Summary Judgment 🔑 345](#)

Discharged employee did not have fair chance to obtain from employer evidence that it routinely allowed other business managers to file late expense reports and to delay their product certifications without consequence, as required to rebut employer's claim that it had just cause to terminate employee for repeated violations of company policy, and thus claim alleging termination without just cause under Puerto Rico law was not ripe for summary judgment, since employer stonewalled discovery process by providing non-answers at supervisor's deposition, unilaterally pushing back agreed-upon date of production and responding to employee's motion to compel by again seeking to delay production, and providing final non-response that made it clear it would produce no more information. [Baltodano v. Merck, Sharp & Dohme \(I.A.\) Corp., C.A.1 \(Puerto Rico\) 2011, 637 F.3d 38. Summary Judgment 🔑 351](#)

Although the rule providing that a district court may allow for discovery if a party opposing summary judgment shows by affidavit that it cannot present facts essential to justify its opposition formally applies only in the context of a motion for summary judgment, its discovery standards are also appropriate for parties responding to a motion to dismiss for lack of subject matter jurisdiction. [Cheyenne Arapaho Tribes of Oklahoma v. U.S., C.A.D.C.2009, 558 F.3d 592, 385 U.S.App.D.C. 76. Federal Courts 🔑 2080](#)

Failure of district court to indicate to parties that it was treating defendant's motion to dismiss action for failure to state claim, based upon alleged voluntary corporate dissolution of defendant more than three years prior to institution of suit, as a motion for summary judgment or to provide "reasonable opportunity" for plaintiff to file material pertinent to motion for summary judgment was improper; plaintiff should have been afforded opportunity to employ discovery in order to counter facts set forth in defendant's affidavit or to establish factual basis for action against defendant. [Johnson v. RAC Corp., C.A.4 \(Md.\) 1974, 491 F.2d 510. Summary Judgment 🔑 278\(2\)](#)

Former lessee sufficiently established that discovery was necessary before summary judgment, and thus the District Court would decline to convert motion to dismiss for failure to state a claim to one for summary judgment, in action brought by former lessee against property management company and its law firm asserting violations of the Fair Debt Collection Practices Act (FDCPA); former lessee asserted that she needed written and deposition discovery to oppose defendants' affidavit regarding fee arrangement between management company and law firm and fees paid, including a redacted fee agreement, invoices, cancelled checks, and testimony from representative of law firm. [Jackson v. Sagal, D.Md.2019, 370 F.Supp.3d 592. Federal Civil Procedure 🔑 1832; Summary Judgment 🔑 278\(2\); Summary Judgment 🔑 344](#)

Depositor's child, who allegedly had legal interest in depositor's savings account, and personal representative of estates of depositor and depositor's widow were not entitled to have court defer consideration of bank's motion for summary judgment in action for accounting and fraudulent concealment so that they could conduct additional discovery regarding bank's data-retention policies and whether bank retained records regarding accounts of depositor's family; personal representative and child had full opportunity to conduct discovery, and none of proposed avenues for discovery have could yielded facts

that would have changed outcome. [Trudel v. SunTrust Bank, D.D.C.2018, 288 F.Supp.3d 239](#), reconsideration denied [325 F.R.D. 23](#), affirmed [924 F.3d 1281](#), [441 U.S.App.D.C. 118](#), rehearing en banc denied. [Summary Judgment](#) 🏷️ 344

Patron's affidavit requesting district court stay ruling on motion for summary judgment until he completed additional discovery in his action against restaurant, alleging negligence caused his slip and fall, was untimely, and therefore, striking affidavit was warranted; affidavit was filed more than two months after motion for summary judgment was filed and nearly two weeks after hearing was held on motion, patron had more than eight months to conduct discovery and did not do so, court had granted two discovery extensions, and, while patron had proceeded pro se for significant portion of discovery, he did not seek to reopen discovery upon obtaining counsel. [Morrison v. YumA Brands, Inc., D.Mass.2014, 53 F.Supp.3d 437](#). [Summary Judgment](#) 🏷️ 344

Under rule allowing for postponement of summary judgment pending discovery, landowner failed to demonstrate that additional facts regarding a water leak, or an agenda of a meeting between landowner and village mayor were essential to justify his opposition to village's motion for summary judgment in landowner's action challenging village's termination of water services to landowner's property allegedly without providing him predeprivation due process as required by the Due Process Clause of the Fourteenth Amendment; issue of water leak was irrelevant to whether landowner received predeprivation due process, and landowner had first-hand knowledge of meeting given his attendance at the meeting. [Manza v. Newhard, S.D.N.Y.2013, 915 F.Supp.2d 638](#). [Summary Judgment](#) 🏷️ 344

Examination of witnesses, considerations governing motion

In a bench trial, if party opposing summary judgment raises any triable fact questions, such party has right to adduce expert testimony of live witnesses and cross-examine his opponent's witnesses rather than to have to rely on affidavits submitted in opposition to summary judgment motion. [U.S. v. J.B. Williams Co., Inc., C.A.2 \(N.Y.\) 1974, 498 F.2d 414](#). [Summary Judgment](#) 🏷️ 318

Summary judgment is not appropriate where trial, with its opportunity for cross-examination and testing credibility of witnesses, might disclose picture substantially different from that given by affidavits. [U. S. v. Perry, C.A.9 \(Cal.\) 1970, 431 F.2d 1020](#). [Summary Judgment](#) 🏷️ 316

Fact that neither side's experts had been cross-examined on contents of affidavits, all executed after close of discovery, counseled against summary judgment based on experts' affidavits. [Jorman v. Veterans Admin., N.D.Ill.1984, 579 F.Supp. 1407](#). [Summary Judgment](#) 🏷️ 91

In evaluating motion for summary judgment, court should give due weight to need for cross-examination by opposing party in relation to evidentiary materials, general desirability of demeanor testimony, factor of access to proof by opposing party and desirability that case receive full exploration of trial. [Lipschutz v. Gordon Jewelry Corp., S.D.Tex.1974, 373 F.Supp. 375](#). [Summary Judgment](#) 🏷️ 346

The possibility that litigant might elicit something on cross-examination, when there is no indication of what that might be specifically, cannot defeat motion for summary judgment. [Buckley v. Vidal, S.D.N.Y.1971, 327 F.Supp. 1051](#). [Summary Judgment](#) 🏷️ 95

Before deciding motion for summary judgment, court should consider need for cross-examination by opposing party in relation to evidentiary materials, general desirability of demeanor testimony, factor of access to proof by opposing party and desirability that the case receive full exploration of a trial. [In re Shortt, Bkrcty.W.D.Va.1982, 16 B.R. 813](#). [Summary Judgment](#) 🏷️ 41

Expert testimony, considerations governing motion

Expert reports speculating how various design features of a high-rise building could have been modified to withstand a collapse from an unfought fire were too speculative and conjectural to create triable issues of fact on a motion for summary judgment, on a negligence claim under New York law that arose from damage to electric substation that had been damaged from the collapse of a high-rise building from the indirect affects of a terrorist attack, where the reports did not address the interaction between identified

"vulnerabilities" and the unprecedented etiology and severity of the cataclysm from that attack in any substantive or adequate way. [Aegis Ins. Services, Inc. v. 7 World Trade Co., L.P., C.A.2 \(N.Y.\) 2013, 737 F.3d 166. Summary Judgment](#) 🏹 91

In case in which plaintiff must produce expert's opinion at trial in order to prevail and defendant produces expert in its favor on motion for summary judgment and plaintiff fails to prove contrary expert in opposition to that motion, there is no genuine issue to be tried by jury. [Cooper v. U.S., D.S.C.1995, 903 F.Supp. 953. Summary Judgment](#) 🏹 91

Rule against mere conclusory allegations defeating summary judgment motions extends to cases where expert makes those assertions. [Olcott v. LaFiandra, D.Vt.1992, 793 F.Supp. 487. Summary Judgment](#) 🏹 91

Necessity of expert testimony to translate and interpret material and technical facts is justifiable ground for denying summary judgment. [Sonobond Corp. v. Uthe Technology, Inc., N.D.Cal.1970, 314 F.Supp. 878, 165 U.S.P.Q. 731. Summary Judgment](#) 🏹 91

Plaintiff's explanation that she could not retain expert due to reluctance of professionals to testify against colleague in pharmaceutical malpractice case was insufficient to warrant voluntary dismissal after defendant had moved for summary judgment. [Saviour v. Revco Discount Drug Centers, Inc., D.Kan.1989, 126 F.R.D. 569. Federal Civil Procedure](#) 🏹 1700

Failure to state claim, considerations governing motion

District court committed no procedural error in granting summary judgment for lender in removed state-court action for tortious interference brought by borrowers' trust, even though court had commented that the complaint failed to state a claim upon which relief could be granted; lender explicitly moved for summary judgment and submitted supporting documents that the court considered without objection, the district court's Memorandum and Order stated that it was granting summary judgment and identified the documents from borrowers' earlier, related case and borrowers' bankruptcy proceedings on which the court was relying, and, when trust moved for reconsideration, the court denied the motion in a second Memorandum and Order, explaining that its grant was governed by the summary judgment rule because it had considered matters outside the pleadings and all parties had been given an opportunity to present material pertinent to the motion. [Meyer v. U.S. Bank Nat. Ass'n, C.A.8 \(Neb.\) 2015, 792 F.3d 923. Removal of Cases](#) 🏹 119

In deciding motion for summary judgment asserting plaintiff's failure to state a claim, court must accept all well-pleaded facts as true, viewing them in the light most favorable to plaintiff, and summary judgment is appropriate if, accepting all alleged facts as true, plaintiff's complaint nonetheless fails to state a claim. [In re Enron Corp. Securities, Derivative & ERISA Litigation, S.D.Tex.2009, 610 F.Supp.2d 600. Summary Judgment](#) 🏹 50; [Summary Judgment](#) 🏹 74; [Summary Judgment](#) 🏹 75

Frivolous action, considerations governing motion

Evidence, in civil rights action against warden of state prison, established that issue of interference with mailing privileges was frivolous, warranting summary judgment in favor of defendant. [Prewitt v. State of Ariz. ex rel. Eyman, C.A.9 \(Ariz.\) 1969, 418 F.2d 572, certiorari denied 90 S.Ct. 1395, 397 U.S. 1054, 25 L.Ed.2d 670, rehearing denied 90 S.Ct. 1703, 398 U.S. 915, 26 L.Ed.2d 81. Summary Judgment](#) 🏹 116

Good faith, considerations governing motion

In suit to recover bankrupt's unpaid taxes from amounts paid by the bankrupt to counsel as retainers, factual issues precluded summary judgment for the attorneys on ground that they could not be held liable as constructive trustees because they accepted the retainers in good faith and for valuable consideration, there being dispute on issue of good faith. [Alioto v. U.S., N.D.Cal.1984, 593 F.Supp. 1402. Summary Judgment](#) 🏹 238

In action brought by government for ejectment of person occupying unpatented mining claim located on public land, genuine issue of fact existed as to good or bad faith involved in person's use of the claim, precluding summary judgment on ejectment issue. [U.S. v. Langley, E.D.Cal.1984, 587 F.Supp. 1258. Mines And Minerals](#) 🏹 51(4); [Summary Judgment](#) 🏹 203

Even though there may be considerable doubt as to existence of a claim or defense, if it appears to be in good faith, party asserting it is entitled to a trial and opportunity to examine the case or defense of his adversary in the usual course and a summary judgment should

not be entered. [Fraleigh v. Worthington, D.C.Wyo.1974, 385 F.Supp. 605. Summary Judgment 50](#)

Grounds for judgment, considerations governing motion

District court could grant summary judgment on any factual ground shown by competent evidence of record, even if that ground was not specifically raised by movant. [U.S. v. Houston Pipeline Co., C.A.5 \(Tex.\) 1994, 37 F.3d 224. Summary Judgment 277\(2\); Summary Judgment 304](#)

A district court is prohibited from basing its decision to grant a summary judgment motion solely on an opposing party's violation of court rules; any alternative rationale would result in turning summary judgment rule into mere sanction for noncompliance with local rules. [U.S. v. Honeywell Intern., Inc., E.D.Cal.2008, 542 F.Supp.2d 1188. Summary Judgment 286; Summary Judgment 351](#)

Judgment as matter of law, considerations governing motion

Summary judgment is appropriate only when court, viewing record as whole and in light most favorable to nonmoving party, determines that there exists no genuine issue of material fact and that moving party is entitled to judgment as matter of law. [Clark v. Alexander, C.A.4 \(Va.\) 1996, 85 F.3d 146. Summary Judgment 45\(2\); Summary Judgment 75](#)

Summary judgment is appropriate in favor of party that is entitled as matter of law to judgment in its favor where parties agreed that no material facts are in dispute. [Pentel v. City of Mendota Heights, C.A.8 \(Minn.\) 1994, 13 F.3d 1261. Summary Judgment 41](#)

If movant establishes entitlement to judgment as matter of law, given uncontroverted and operative facts contained in documentary evidence, summary judgment will lie. [Committee for First Amendment v. Campbell, C.A.10 \(Okla.\) 1992, 962 F.2d 1517. Summary Judgment 64; Summary Judgment 308](#)

Where parties had agreed on material facts of dispute involving proper interpretation of relevant statutes and regulations, case could be resolved as matter of law and thus summary judgment was proper procedural device. [Smith v. Califano, C.A.9 \(Cal.\) 1979, 597 F.2d 152, certiorari denied 100 S.Ct. 481, 444 U.S. 980, 62 L.Ed.2d 406. Summary Judgment 6](#)

Summary judgment is appropriate where one party is entitled to judgment as a matter of law. [Kotmair v. Gray, C.A.4 \(Md.\) 1974, 505 F.2d 744. Summary Judgment 13](#)

Summary judgment should be granted only when the moving party is entitled to judgment as a matter of law and no genuine issue remains for trial, it being quite clear what the truth is. [McPhee v. Oliver Tyrone Corp., C.A.5 \(Miss.\) 1974, 489 F.2d 718. See, also, Stansifer v. Chrysler Motors Corp., C.A.Wash.1973, 487 F.2d 59; Dozier v. U.S., C.A.Tex.1973, 473 F.2d 866; Cochran v. Feeko, E.D.Pa.1991, 777 F.Supp. 1222, affirmed 947 F.2d 934; Granoff v. Merrill Lynch & Co., Inc., S.D.N.Y.1991, 775 F.Supp. 621, affirmed 962 F.2d 2; Carey on Behalf of Carey v. Maine School Administrative Dist. No. 17, D.Me.1990, 754 F.Supp. 906; Marine Midland Bank, N.A. v. Elshazly, D.Conn.1991, 753 F.Supp. 20; Smith v. Taylor Rental, S.D.Ohio 1990, 747 F.Supp. 413. Summary Judgment 45\(2\)](#)

In addition to the defense of a genuine dispute of material fact, to successfully resist summary judgment, there must be at least one viable theory of law under the asserted version of the facts that would, if true, entitle the opponent of the motion to judgment as a matter of law. [Arney v. U.S., C.A.9 \(Cal.\) 1973, 479 F.2d 653. Summary Judgment 45\(2\)](#)

Summary judgment must be denied where movant fails to show his entitlement to a favorable determination as a matter of law. [Bloomgarden v. Coyer, C.A.D.C.1973, 479 F.2d 201, 156 U.S.App.D.C. 109. Summary Judgment 64](#)

Granting of a motion for summary judgment is the exception rather than the rule and the exception may be utilized only where there is no triable issue, that is, where there remains no genuine issue as to a material fact and the moving party is entitled to judgment as a matter of law. [Crystal City v. Del Monte Corp., C.A.5 \(Tex.\) 1972, 463 F.2d 976, certiorari denied 93 S.Ct. 464, 409 U.S. 1023, 34 L.Ed.2d 315. Summary Judgment 45\(2\)](#)

Summary judgment is properly granted when there is no genuine issue as to any material fact and moving party is entitled to judgment as matter of law. [Underwater Storage, Inc. v. U. S. Rubber Co.](#), C.A.D.C.1966, 371 F.2d 950, 125 U.S.App.D.C. 297, 151 U.S.P.Q. 90, certiorari denied 87 S.Ct. 859, 386 U.S. 911, 17 L.Ed.2d 784, 152 U.S.P.Q. 844, on remand 314 F.Supp. 546, 165 U.S.P.Q. 97. See, also, [St. Louis County Bank v. U.S.](#), C.A.8 (Mo.) 1982, 674 F.2d 1207; [Cubbage v. Averett](#), C.A.5 (La.) 1980, 626 F.2d 1307; [Standard Oil Co. v. Department of Energy](#), Em.App.1978, 596 F.2d 1029; [Chavez v. Noble Drilling Corp.](#), C.A.La.1978, 567 F.2d 287. [Summary Judgment](#) 📌 44

Summary judgment should be granted only in those cases in which moving party is entitled to judgment as a matter of law, where record clearly shows full truth of matter in controversy and no genuine issue of material fact exists. [St. John v. New Amsterdam Cas. Co.](#), C.A.5 (La.) 1966, 357 F.2d 327. [Summary Judgment](#) 📌 45(2)

Justiciability of controversy, considerations governing motion

If there is no dispute as to any issue of fact, summary judgment movant must show that there does not exist a justiciable controversy. [Brad Ragan, Inc. v. Bandag Inc.](#), W.D.N.C.1972, 341 F.Supp. 884, 173 U.S.P.Q. 63. [Summary Judgment](#) 📌 77

Language of proceedings, considerations governing motion

In collecting record for summary judgment, federal district court in Puerto Rico must sift out non-English materials, and parties should submit only English language materials. [Gonzalez-De-Blasini v. Family Dept.](#), C.A.1 (Puerto Rico) 2004, 377 F.3d 81. [Summary Judgment](#) 📌 277(1); [Summary Judgment](#) 📌 286; [Summary Judgment](#) 📌 302

Law of case, considerations governing motion

Individuals who lived and worked near nuclear processing facility were not prejudiced by district court's change in position between *Daubert* ruling and summary judgment as to admissibility of expert's opinion on Price-Anderson public liability claim against facility to establish causation of cancer by exposure to uranium effluent; had district court ruled against individuals previously in its *Daubert* order, their case would have been dismissed earlier and they would not have had opportunity to create new expert reports. [McMunn v. Babcock & Wilcox Power Generation Group, Inc.](#), C.A.3 (Pa.) 2017, 869 F.3d 246, certiorari denied 138 S.Ct. 1012, 583 U.S. 1120, 200 L.Ed.2d 256. [Federal Courts](#) 📌 3702

The law of the case doctrine does not apply to a denial of summary judgment. [Aycock Engineering, Inc. v. Airflite, Inc.](#), C.A.Fed.2009, 560 F.3d 1350, 90 U.S.P.Q.2d 1301. [Courts](#) 📌 99(3)

Law-of-the-case doctrine precluded district court on remand from determining on counterclaim seeking cancellation of INTELLIJET mark that private aviation company did not use INTELLIJET mark in commerce in or before 2005, and therefore court could not conclude that there existed separate defect in ownership of mark with respect to company's common law claim, where Court of Appeals had found that there existed question of fact precluding summary judgment regarding whether company marketed its software to external customers, and there was no affirmative evidence suggesting that such marketing efforts took place after 2005. [Netjets Inc. v. Intellijet Group, LLC](#), S.D.Ohio 2015, 138 F.Supp.3d 929, 117 U.S.P.Q.2d 1292, affirmed in part, reversed in part and remanded 678 Fed.Appx. 343, 121 U.S.P.Q.2d 1540, 2017 WL 466112. [Federal Courts](#) 📌 3798

District court's holding in denying housing developer's motion to dismiss non-profit organization's Fair Housing Act (FHA) claim that organization "undertook nationwide investigation" regarding developer's allegedly discriminatory activities was not law of the case for purposes of determining, on developer's subsequent motion for summary judgment, whether organization suffered "injury in fact" required for standing; summary judgment evidence presented facts that were far more complete and detailed than were allegations court considered in ruling on motion to dismiss. [Equal Rights Center v. Equity Residential](#), D.Md.2011, 798 F.Supp.2d 707. [Courts](#) 📌 99(3)

In light of the preliminary and interlocutory ruling made on the motion to dismiss, law of the case doctrine did not foreclose reconsideration of finding the timeliness of negligent misrepresentation, fraud, and unfair trade practices claims against insurance brokers on summary judgment; facts on motion to dismiss for failure to state a claim record, while similar, were not identical to those in the summary judgment record, and a different legal standard of review also applied when assessing the merits of summary judgment motions.

[Financial Resources Network, Inc. v. Brown & Brown, Inc., D.Mass.2010, 754 F.Supp.2d 128. Courts](#) 🏠 99(3)

District court order on motion for preliminary injunction in action challenging United States Fish and Wildlife Service's (FWS's) biological opinion concerning impact of coordinated operations of state water projects on threatened delta smelt, which held that water district members were likely to succeed on their National Environmental Policy Act (NEPA) claim, was not law of the case on cross-motions for summary judgment on NEPA claims against Bureau of Reclamation; summary judgment was entirely independent proceeding from preliminary injunction phase. [San Luis & Delta-Mendota Water Authority v. Salazar, E.D.Cal.2009, 686 F.Supp.2d 1026. Courts](#) 🏠 99(4)

District court's prior decision allowing former university employee's Family and Medical Leave Act (FMLA) claims to go forward on motion to dismiss for failure to state claim brought by her former employer did not foreclose, pursuant to "law-of-the-case" doctrine, employer's FMLA-related arguments on its subsequent motion for summary judgment in same action; standards applied to motion to dismiss were significantly different than those to be applied on summary judgment. [Gilmore v. University of Rochester, W.D.N.Y.2009, 654 F.Supp.2d 141. Courts](#) 🏠 99(3)

District court's finding that accused web servers participated in determining actual position of items displayed on client's computers was not binding under law of the case doctrine, based on summary judgment of non-infringement of patent claim on grounds that accused client computers did not themselves manage actual positioning on their associated displays as required by patent claim, since law of the case did not apply due to vacatur of summary judgment order. [Lucent Technologies, Inc. v. Gateway, Inc., S.D.Cal.2008, 631 F.Supp.2d 1316. Patents](#) 🏠 1973

Ruling on motion to remand case removed to federal court, that jurisdiction existed in district court because the resolution of plaintiff's common law claim would require the resolution and application of federal patent law, was the law of the case, precluding summary judgment in favor of plaintiff on claim attempting to relitigate the previous ruling denying its motion to remand. [Precision Components, Inc. v. C.W. Bearing USA, Inc., W.D.N.C.2008, 630 F.Supp.2d 635. Courts](#) 🏠 99(3)

Prior unsuccessful motion for preliminary injunction to prohibit further distribution of market notification letter, alleging inequitable conduct or fraud on court, did not preclude, under law of case doctrine, subsequent summary judgment consideration of business tort allegations not previously made that patentee had acted in bad faith because he sent letters to marketplace regarding potential infringement knowing that patents were invalid as obvious, anticipated, or unenforceable. [Jenkins v. HT Window Fashions Corp., W.D.Pa.2009, 624 F.Supp.2d 427, reconsideration denied. Patents](#) 🏠 1937

Court's prior ruling denying general partner's motion to dismiss copartners' claim seeking declaratory judgment on enforceability of option agreement which was subject of instant motion for partial summary judgment by copartners on general partner's claim of breach of option agreements was not law of case as to effect of contract documents precluding reargument or introduction of factual assertions into record which were contrary to ruling; only effect of prior order was to declare that general partner, nonmoving party, had convinced court that he had possibility of proving facts necessary to support his claim for relief so as to permit claims to go forward on issue of whether general partner's option to purchase one-third share of partnership was conditioned on satisfactory performance of his duties under management agreement. [Cobin v. Rice, N.D.Ind.1993, 823 F.Supp. 1419. Courts](#) 🏠 99(3)

Plaintiff's failure to respond to defendant's request for admissions within period given resulted in automatic admission of requests contained therein, conclusively establishing admitted facts as law of case, which could be utilized by defendant to support motion for summary judgment. [An-Port, Inc. v. MBR Industries, Inc., D.Puerto Rico 1991, 772 F.Supp. 1301, motion to amend denied 142 F.R.D. 47. Federal Civil Procedure](#) 🏠 1685

While previous order denying motion for summary judgment may have been law of the case, such order did not bar further motion for summary judgment on separate ground. [Phillips Machinery Co. v. LeBlond, Inc., N.D.Okla.1980, 494 F.Supp. 318. Summary Judgment](#) 🏠 230

Discussion of applicable law made by district court in connection with defendant's first motion for summary judgment was the law of the case, on defendant's second motion for summary judgment. [Eastern Tunneling Corp. v. Southgate Sanitation Dist., Arapahoe County, Colo., D.C.Colo.1979, 487 F.Supp. 109. Courts 99\(3\)](#)

Trial court's ruling in denying summary judgment to manufacturer in nation-wide class action involving off-label promotion of a prescription drug, that no actual conflict existed between Pennsylvania and Indiana unjust enrichment law, was not "law-of-the-case" as to later-raised question of whether a conflict of law existed among all 50 states' unjust enrichment law, since manufacturer had been given no occasion to dispute this wider question on the motion for summary judgment. [In re Actiq Sales and Marketing Practices Litigation, E.D.Pa.2015, 307 F.R.D. 150. Courts 99\(3\)](#)

Likelihood of success on merits, considerations governing motion

Although one appropriate use of summary judgment is putting swift end to meritless litigation, it remains true that summary judgment is improper when court merely believes that opposing party is unlikely to prevail on the merits after trial. [American Intern. Group, Inc. v. London American Intern. Corp. Ltd., C.A.2 \(N.Y.\) 1981, 664 F.2d 348, 212 U.S.P.Q. 803. Summary Judgment 52](#)

Court is justified in granting summary judgment if, after viewing the evidence in the light most favorable to the party opposing the motion and giving that party the benefit of all inferences reasonably deducible, the court is convinced that, upon a trial of the case to the jury, verdict in favor of the moving party would have to be granted. [Weber v. Towner County, C.A.8 \(N.D.\) 1977, 565 F.2d 1001. See, also, Bellflower v. Pennise, C.A.Mo.1977, 548 F.2d 776. Summary Judgment 50](#)

Summary judgment is only appropriate where documents tendered to the court disclose that no genuine issue of material fact remains to be decided, and the district judge may grant summary judgment only where the prevailing party has demonstrated as a matter of law that he is entitled to judgment on the merits. [Felix v. Young, C.A.6 \(Mich.\) 1976, 536 F.2d 1126. Summary Judgment 45\(2\); Summary Judgment 308](#)

District court must deny motion for summary judgment after finding genuine factual dispute even if it is convinced that party opposing motion is unlikely to prevail at trial. [Hughes v. American Jawa, Ltd., C.A.8 \(Mo.\) 1976, 529 F.2d 21. Summary Judgment 45\(1\)](#)

Summary judgment cannot be sustained merely because the judge believes that the party against whom it is entered is unlikely to prevail on the merits after a trial. [Jaroslawicz v. Seedman, C.A.2 \(N.Y.\) 1975, 528 F.2d 727.](#)

That it may be surmised that adverse party is unlikely to prevail at trial is not sufficient to authorize summary judgment against him. [American Mfrs. Mut. Ins. Co. v. American Broadcasting-Paramount Theatres, Inc., C.A.2 \(N.Y.\) 1967, 388 F.2d 272, on remand 45 F.R.D. 38. See, also, Aulds v. Foster, C.A.La.1973, 484 F.2d 945. Summary Judgment 52](#)

That trial court believed it unlikely that plaintiff would prevail at trial is insufficient to authorize summary judgment against him. [Jobson v. Henne, C.A.2 \(N.Y.\) 1966, 355 F.2d 129. Summary Judgment 52](#)

That a trial court believed a party was unlikely to prevail on a certain issue of fact raised by the pleadings was not a sufficient basis for grant of summary judgment against such party. [United Pac. Ins. Co. v. U. S. ex rel. Mississippi Val. Equipment Co., C.A.8 \(Ark.\) 1961, 296 F.2d 160. Summary Judgment 52](#)

That one reasonably may surmise that plaintiff is unlikely to prevail upon a trial is not a sufficient basis for refusing him his day in court by granting motion for summary judgment with respect to issues which are not shown to be sham, frivolous, or so unsubstantial that it would obviously be futile to try them. [Landy v. Silverman, C.A.1 \(Mass.\) 1951, 189 F.2d 80. See, also, Northwestern Auto Parts Co. v. Chicago, B. & Q.R. Co., C.A.Minn.1957, 240 F.2d 743; Sprague v. Vogt, C.C.A.Minn.1945, 150 F.2d 795. Summary Judgment 52](#)

Fact that it appears to district court that nonmovant party is unlikely to prevail at trial or that movant's statement of facts appears more plausible is not reason to grant summary judgment. [Lee v. U.S., W.D.Tex.1994, 870 F.Supp. 137. Summary Judgment 52](#)

Summary judgment is improper where court merely believes it unlikely that nonmoving party will prevail at trial. [Exxon Corp. v. Board of Educ. of Lamar County, Miss., S.D.Miss.1994, 849 F.Supp. 479. Summary Judgment](#) 📄 52

In order to survive motion for summary judgment, plaintiffs need not show that they will prevail on substance of their claims, but only that evidence they had presented raises material fact issues which must be resolved by trier of fact. [Sudarsky v. City of New York, S.D.N.Y.1991, 779 F.Supp. 287, affirmed 969 F.2d 1041, certiorari denied 113 S.Ct. 1059, 506 U.S. 1084, 122 L.Ed.2d 365, rehearing denied 113 S.Ct. 1437, 507 U.S. 980, 122 L.Ed.2d 803, motion to vacate denied, reconsideration denied. Summary Judgment](#) 📄 46

Fact that nonmoving party is unlikely to prevail at trial or that movant's statement of facts appears more plausible is not a reason to grant summary judgment. [Boyett Coffee Co. v. U.S., W.D.Tex.1991, 775 F.Supp. 1001. Summary Judgment](#) 📄 52

Loss of evidence, considerations governing motion

Loss of allegedly defective product while in custody of plaintiff's expert did not entitle products liability defendants to summary judgment; parties disputed whether defense experts had already performed destructive testing upon the product, plaintiff disputed whether such testing was *sine qua non* of the defense, and plaintiff's expert insisted that information already available to parties, including over 200 photographs, permitted determination of cause of underlying accident. [Shultz v. Barko Hydraulics, Inc., a Div. of Pettibone Corp., W.D.Pa.1993, 832 F.Supp. 142. Products Liability](#) 📄 409; [Summary Judgment](#) 📄 244

Mixed questions of fact and law, considerations governing motion

Assuming original contracts and engagements were illegal and void because of violation of usury statutes and "loan shark law," claims of complaint that parties entered into agreements purporting to settle and compromise original contracts and engagements and that settlement agreements did not eliminate illegality presented complex issues of fact and law and mixed questions of law and fact not susceptible of disposition by summary judgment. [Indian Lake Estates, Inc. v. Lichtman, C.A.D.C.1962, 311 F.2d 776, 114 U.S.App.D.C. 90. Summary Judgment](#) 📄 123

In action against automobile liability insurer for amount of plaintiff's judgment against insured for injuries sustained in automobile accident, issues presented by complaint alleging that insured was obligated to furnish proof of financial responsibility as result of prior automobile accident, and that policy was "required policy" under New Jersey financial responsibility statute, [N.J.S.A. 39:6-1, 39:6-20](#), and that as a result insurer's liability was absolute under such statute, and by answer denying such allegations, were mixed questions of law and fact precluding entry of summary judgment. [Merchants Indem. Corp. of New York v. Peterson, C.C.A.3 \(N.J.\) 1940, 113 F.2d 4. Summary Judgment](#) 📄 171; [Summary Judgment](#) 📄 356

Affidavits in support and in opposition to motion of defendant for dismissal for failure to state a claim for relief, or, for summary judgment on complaint wherein plaintiff alleged a life employment by contracts entered into with defendant's division manager, and a wrongful discharge from employment, presented mixed questions of fact and law, precluding relief asked. [Powell v. Fuller Brush Co., D.C.N.J.1954, 15 F.R.D. 239. Federal Civil Procedure](#) 📄 1833; [Summary Judgment](#) 📄 184

Need of trial, considerations governing motion

Plaintiffs' "mere hope" that evidence might develop at trial to breathe life into their claim was insufficient to overcome motion for summary judgment. [Gray v. Town of Darien, C.A.2 \(Conn.\) 1991, 927 F.2d 69, certiorari denied 112 S.Ct. 170, 502 U.S. 856, 116 L.Ed.2d 133. Summary Judgment](#) 📄 95

Issue of material fact required to be present to defeat summary judgment need not be resolved conclusively in favor of the party asserting its existence; movant need only show that sufficient evidence supporting the claimed factual dispute does not require a jury or judge at trial to resolve the parties' differing versions of truth. [Cedillo v. International Ass'n of Bridge & Structural Iron Workers, Local Union No. 1, C.A.7 \(Ill.\) 1979, 603 F.2d 7. Summary Judgment](#) 📄 82

Where record shows that genuine issues of fact exist and that evidence on those issues is conflicting, of uncertain weight, in part incompetent, and itself susceptible of various interpretations, only by a trial can court ascertain pertinent facts and then move on to decide the questions of substantive law and, in such a situation, entry of summary judgment is not proper. [American Securit Co. v. Hamilton Glass Co., C.A.7 \(Ind.\) 1958, 254 F.2d 889, 117 U.S.P.Q. 219. Summary Judgment 45\(1\); Summary Judgment 93; Summary Judgment 302; Summary Judgment 304](#)

The appropriate inquiry on summary judgment is whether there is need for trial. [Hionis Intern. Enterprises, Inc. v. Tandy Corp., D.Del.1994, 867 F.Supp. 268, affirmed 61 F.3d 895. Summary Judgment 1](#)

Motion for summary judgment gives judge initial opportunity to assess need for a trial without weighing evidence or determining credibility. [Jameson v. Pack, D.Kan.1993, 815 F.Supp. 410. Summary Judgment 2](#)

Favorable view of opposition to motion, considerations governing motion

On a motion for summary judgment, facts must be viewed in the light most favorable to the nonmoving party only if there is a genuine dispute as to those facts. [Ricci v. DeStefano, U.S.2009, 129 S.Ct. 2658, 557 U.S. 557, 174 L.Ed.2d 490. Summary Judgment 75](#)

On summary judgment, record will be viewed in light most favorable to party opposing the motion. [Poller v. Columbia Broadcasting System, Inc., U.S.Dist.Col.1962, 82 S.Ct. 486, 368 U.S. 464, 7 L.Ed.2d 458. See, also, Washington v. Cameron, 1969, 411 F.2d 705, 133 U.S.App.D.C. 391; United Mine Workers of America, Dist. 22 v. Roncco, C.A.Wyo.1963, 314 F.2d 186, on remand 232 F.Supp. 865; Alaniz v. U.S., C.A.N.M.1958, 257 F.2d 108; Booth v. Barber Transp. Co., C.A.Neb.1958, 256 F.2d 927; Zoby v. American Fidelity Co., C.A.Va.1957, 242 F.2d 76; Purity Cheese Co. v. Frank Ryser Co., C.C.A.Wis.1946, 153 F.2d 88; Technographics, Inc. v. Mercer Corp., M.D.Pa.1991, 777 F.Supp. 1214, affirmed 26 F.3d 123; Stafford v. Harrison, D.Kan.1991, 766 F.Supp. 1014. Summary Judgment 75](#)

District court did not fail to construe facts in light most favorable to homeowner in considering village's motion for summary judgment on homeowner's claim that village violated his equal protection rights in connection with fire investigation, inasmuch as there was not enough space to discuss explicitly every fact and counter-fact, and mere fact that argument had not been explicitly laid out did not mean that it had not been given serious consideration. [McDonald v. Village of Winnetka, C.A.7 \(Ill.\) 2004, 371 F.3d 992. Summary Judgment 113](#)

Party not moving for summary judgment is in a favorable posture, being entitled to have credibility of his evidence as forecast assumed, his version of all that is in dispute accepted, all internal conflicts in it resolved favorably to him, the most favorable of possible alternative inferences from it drawn in his behalf, and finally, to be given benefit of all favorable legal theories invoked by the evidence as considered. [Ross v. Communications Satellite Corp., C.A.4 \(Md.\) 1985, 759 F.2d 355. Summary Judgment 75](#)

Pending proceedings, considerations governing motion

Merits of vessel buyers' state court action against seller for reformation of contract and for damages, alleging breach of contract, negligence, breach of warranty and misrepresentation, were immaterial to consideration of buyers' motion for summary judgment in seller's action to foreclose on preferred ship mortgage. [King v. O/S Nordic Maiden, W.D.Wash.1984, 587 F.Supp. 46. Summary Judgment 201](#)

Where federal district court had no reason to suppose that state law was different from interpretation given by Virginia Beach Circuit Court, by which interpretation the federal district court plaintiffs were bound under doctrine of res judicata, federal district court would exercise its discretion and deny entry of order granting or denying motions for summary judgment pending outcome of matter in state court, as to which appeal had been taken to Virginia Supreme Court. [Menzel v. County Utilities Corp., E.D.Va.1979, 501 F.Supp. 354. Federal Courts 3008\(3\); Federal Courts 3045\(6\)](#)

District court would not rule on defendants' motions for summary judgment on fraudulent conveyance, turnover and quiet title claims asserted by trustee of foreign bankruptcy estate, pending decision by Colorado Supreme Court on validity of tax deeds for property which was subject of trustee's claims; decision by Colorado Supreme Court might well

obviate need for further proceedings in federal court. [In re Grandote County Club Co., Ltd., D.Colo.1997, 208 B.R. 218. Federal Courts](#) 🏠 2650

Pending motions, considerations governing motion

Assignee's letter stating that assignee was acting as paying agents for all of assignor's obligations assumed under government contract did not constitute guaranty of payment to subcontractor because of lack of consideration but granting of summary judgment against subcontractor was error where there was pending motion to compel assignee's president to answer certain deposition questions relating to consideration. [Morrison Flying Service v. Deming Nat. Bank, C.A.10 \(N.M.\) 1965, 340 F.2d 430. Summary Judgment](#) 🏠 157; [Summary Judgment](#) 🏠 344

The magistrate judge would defer its decisions on insurer's motions to compel discovery responses and to amend its complaint, until District Court decided insured's motion for summary judgment, in insurer's declaratory judgment action seeking to limit coverage for property damage to apartment complex, on grounds that insured lost its insurable interest in the property due to foreclosure and insured's misrepresentations voided the policy under Georgia law; both the compel and amend motions would be substantially affected, if not mooted outright, if insured won on summary judgment. [Colony Ins. Co. v. 9400 Abercorn, LLC, S.D.Ga.2012, 866 F.Supp.2d 1376, subsequent determination 2012 WL 3985088. United States Magistrate Judges](#) 🏠 201

Questions of law, considerations governing motion--Generally

Summary judgment is particularly appropriate if unresolved issues are primarily legal rather than factual. [Walsh v. U.S., C.A.8 \(Iowa\) 1994, 31 F.3d 696. Summary Judgment](#) 🏠 13

Where unresolved issues are merely legal rather than factual, summary judgment is particularly appropriate. [Tri-State Mint, Inc. v. Riedel Environmental Services, Inc., C.A.8 \(S.D.\) 1994, 29 F.3d 424. Summary Judgment](#) 🏠 43

An issue of law is no barrier to summary judgment. [Spark v. Catholic University of America, C.A.D.C.1975, 510 F.2d 1277, 167 U.S.App.D.C. 56. Summary Judgment](#) 🏠 13

Where only question of law was presented, district court's resolution of matter by granting motion for summary judgment was procedurally proper. [Asuncion v. District Director of U. S. Immigration and Naturalization Service, C.A.9 \(Cal.\) 1970, 427 F.2d 523, motion denied 429 F.2d 1324. See, also, International Ass'n of Machinists and Aerospace Workers, Dist. 776 v. Texas Steel Co., C.A.Tex.1976, 538 F.2d 1116, certiorari denied 97 S.Ct. 1110, 429 U.S. 1095, 51 L.Ed.2d 542, on subsequent appeal 639 F.2d 279. Summary Judgment](#) 🏠 13

Even if no genuine issue of material fact is present, summary judgment is not appropriate unless the governing law supports the moving party's position. [Johnson v. American Leather Specialties Corp., N.D.Iowa 2008, 578 F.Supp.2d 1154. Summary Judgment](#) 🏠 13

--- Foreign law, questions of law, considerations governing motion

In action by Bank of Spain to recover silver purchased from former government of Spain by United States against Federal Reserve Bank and against common carrier which had allegedly made illegal disposition of plaintiff's silver, affidavit of Spanish ambassador containing statement that he arranged for silver sale and received payment therefor on behalf of his government, supported by exhibit setting forth decree and ministerial orders by which the Spanish government acquired its claimed interest in the silver justified summary judgment for the defendants, since federal court could not pass upon the legality of the Act of the Spanish government. [Banco de Espana v. Federal Reserve Bank of New York, C.C.A.2 \(N.Y.\) 1940, 114 F.2d 438. Summary Judgment](#) 🏠 151

Genuine issues of material fact existed regarding substance of Bolivian law regarding contract between Bolivian government-owned purchaser and foreign suppliers, precluding summary judgment in favor of Bolivian purchaser on New York export company's claim for breach of contract, which Bolivian corporation maintained was invalid without mandatory choice-of-Bolivian-law and Bolivian-forum selection clauses; it was unclear whether Bolivian courts would necessarily deny export company any relief in case in which its allegations, if proven, could establish that Bolivian corporation in bad faith induced export company to rely on its promise to award contract. [Walpex Trading Co. v. Yacimientos Petroliferos](#)

[Fiscales Bolivianos, S.D.N.Y.1991, 756 F.Supp. 136](#), reargument denied. [Contracts](#) 352(1); [Summary Judgment](#) 123

Disagreements over meaning of foreign statute raise questions of law, not fact, and they do not preclude granting motion for summary judgment. [Alosio v. Iranian Shipping Lines, S.A., S.D.N.Y.1976, 426 F.Supp. 687](#), affirmed [573 F.2d 1287](#), affirmed [573 F.2d 1290](#), affirmed [573 F.2d 1291](#).

Determination of foreign law in federal system should be treated as a question of law and, therefore, does not obstruct a court's disposition on a motion for summary judgment. [Burnett v. Trans World Airlines, Inc., D.C.N.M.1973, 368 F.Supp. 1152](#). [Summary Judgment](#) 13

---- Statutory construction, questions of law, considerations governing motion

Where there were no genuine issues of material fact and dispute primarily concerned question of interpreting statute and applying it to specific set of facts, issue was properly resolved on motion for summary judgment. [LTV Steel Co., Inc. v. Northwest Engineering & Const., Inc., C.A.7 \(Ind.\) 1994, 41 F.3d 332](#). [Summary Judgment](#) 24

Summary judgment is appropriate where case presents solely legal question of statutory construction based on legislative intent. [Mobil Oil Corp. v. Federal Energy Admin., Em.App.1977, 566 F.2d 87](#). [Summary Judgment](#) 24

In insurer's action seeking declaratory judgment that it was not obligated to pay under life insurance policy, life insurance beneficiary abandoned his equal protection and special legislation theories in opposition to insurer's claim that rules of Interstate Insurance Product Regulation Commission controlled over conflicting Colorado statute, since beneficiary did not respond to insurer's arguments on insurer's motion for summary judgment. [Amica Life Insurance Company v. Wertz, D.Colo.2017, 272 F.Supp.3d 1239](#). [Summary Judgment](#) 286

Summary judgment provides an appropriate mechanism for disposing of a legal question of statutory construction in which the legislative history and policy are by far the most important considerations. [Mobil Oil Corp. v. Federal Energy Administration, N.D.Tex.1977, 435 F.Supp. 983](#). [Summary Judgment](#) 24

---- Miscellaneous questions of law, considerations governing motion

Question whether incorporation of Christian crosses in symbol of City of Las Cruces, New Mexico violated Establishment Clause could be decided as matter of law, and thus could be resolved on summary judgment, in that court was not required to sift through empirical evidence, but was required simply to view symbols through objective observer's eyes. [Weinbaum v. City of Las Cruces, N.M., C.A.10 \(N.M.\) 2008, 541 F.3d 1017](#). [Summary Judgment](#) 112

Argument of plaintiff, who sought to challenge procedures leading to his termination as a medicaid vendor, that fact that he had been unaware of appropriate standards of conduct rendered his termination constitutionally infirm was question of law, and not of fact, and thus not a barrier to a summary judgment. [Agustin v. Quern, C.A.7 \(Ill.\) 1979, 611 F.2d 206](#). [Summary Judgment](#) 236

Whether hospital district management contractor which contracted with hospital district to provide indigent health care was "governmental unit" for purposes of Texas statute providing for injunctive relief against governmental unit based on sexual exploitation by mental health services provider was question of law, not fact, and thus contractor's statement in background section of its summary judgment motion on patient's claims under that statute that it was found to be "governmental unit" could not amount to judicial admission. [Rodriguez v. CHRISTUS Spohn Health System Corp., S.D.Tex.2012, 874 F.Supp.2d 635](#). [Evidence](#) 1673

Whether a debt collection letter complied with the FDCPA's requirement that the amount of the debt be correctly stated is a question of law properly determined on a motion for summary judgment. [Jones v. Midland Funding, LLC, D.Conn.2010, 755 F.Supp.2d 393](#), adhered to on reconsideration [2012 WL 1204716](#), amended [2012 WL 13027349](#), appeal withdrawn, appeal dismissed. [Summary Judgment](#) 145(2)

When considering whether defendants copied the constituent elements of the plaintiff's copyrighted work that were original, substantial similarity may be determined as a matter of law at the summary judgment stage when no reasonable jury could find substantial similarity. [Thornton v. J Jargon Co., M.D.Fla.2008, 580 F.Supp.2d 1261. Summary Judgment 📌 176](#)

Under Uniform Commercial Code, unconscionability of contract provision is question of law for court and proper for resolution on summary judgment. [Pig Imp. Co., Inc. v. Middle States Holding Co., D.Del.1996, 943 F.Supp. 392. Sales 📌 2781; Summary Judgment 📌 232](#)

Preemption of state common law claims by federal law is question of law for court to decide and is properly disposed of on summary judgment motion. [Consolidated Rail Corp. v. Primary Industries Corp., S.D.N.Y.1994, 868 F.Supp. 566. Summary Judgment 📌 31](#)

Summary judgment is especially appropriate where issues in dispute are purely legal, such as in question of whether claims are preempted. [Brown v. Medtronic, Inc., S.D.Ind.1994, 852 F.Supp. 717. Summary Judgment 📌 31](#)

Construction of contract is ordinarily question of law and as such is suitable for summary judgment. [Central Nat. Bank v. Palmer, M.D.Fla.1992, 806 F.Supp. 253. Contracts 📌 176\(1\); Summary Judgment 📌 123](#)

Interpretation of insurance contract language is matter of law, and therefore appropriate in pretrial motion such as motion for summary judgment. [P.W. Stephens Contractors, Inc. v. Mid American Indem. Ins. Co., D.Hawai'i 1992, 805 F.Supp. 854. Summary Judgment 📌 164](#)

Interpretation of Native American treaties is question of law and thus amenable to summary judgment. [Sokaogon Chippewa Community v. Exxon Corp., E.D.Wis.1992, 805 F.Supp. 680, affirmed 2 F.3d 219, rehearing and suggestion for rehearing en banc denied, certiorari denied 114 S.Ct. 1304, 510 U.S. 1196, 127 L.Ed.2d 655. Indians 📌 250; Summary Judgment 📌 207](#)

Construction of insurance contract is matter of law that court can resolve in context of motion for summary judgment. [Hartford Acc. and Indem. Corp. v. U.S. Fidelity and Guar. Co., D.Utah 1991, 765 F.Supp. 677, affirmed 962 F.2d 1484, certiorari denied 113 S.Ct. 411, 506 U.S. 955, 121 L.Ed.2d 335. Insurance 📌 1863; Summary Judgment 📌 164](#)

Where motion for summary judgment presents question concerning construction of written contract, question is one of law if language employed by contract is plain and unambiguous; where intention of parties may be gathered from four corners of agreement, summary judgment is appropriate. [Flair Broadcasting Corp. v. Powers, S.D.N.Y.1990, 733 F.Supp. 179. Summary Judgment 📌 123](#)

Summary judgment was appropriate on issue as to whether unappealed decision by State Commission on Human Relations should be accorded preclusive effect, which was purely question of law. [Reedy v. State of Fla., Dept. of Educ., A State Governmental Agency, N.D.Fla.1985, 605 F.Supp. 172. Summary Judgment 📌 111](#)

Relief allowable on motion, considerations governing motion

Summary judgment rule does not authorize a motion seeking any relief other than summary judgment in the movant's favor. [Stephenson v. Honeywell Intern., Inc., D.Kan.2009, 669 F.Supp.2d 1259. Summary Judgment 📌 273](#)

Damages, considerations governing motion

Damages that are readily calculable based on the undisputed facts may be awarded on summary judgment. [AEP Energy Services Gas Holding Co. v. Bank of America, N.A., C.A.2 \(N.Y.\) 2010, 626 F.3d 699. Summary Judgment 📌 21](#)

Defendants' claims that plaintiffs could not recover damages for any claims for which they did not disclose damages calculations was inappropriate for resolution on a summary judgment motion. [Oracle Corp. v. SAP AG, N.D.Cal.2010, 734 F.Supp.2d 956. Federal Civil Procedure 📌 1278](#)

Defendants could not move for summary judgment on "lost profit claim," as lost profits were a measure of damages and a remedy, not a claim. [In re Methyl Tertiary Butyl Ether](#)

("MTBE") *Products Liability Litigation*, S.D.N.Y.2008, 568 F.Supp.2d 376. [Summary Judgment](#) 101

A summary judgment, interlocutory in character, may be rendered on the issue of liability alone, even though there is a genuine issue as to the amount of damages. *In re NorVergence, Inc., Bkrcty.*D.N.J.2008, 384 B.R. 315, leave to appeal denied 2008 WL 5136706, leave to appeal denied 2008 WL 5136842. [Bankruptcy](#) 2164.1

Relief from judgment, considerations governing motion

Motion for summary judgment may not be granted on ground that, if verdict were rendered for adverse party, the court would set it aside as against the weight of the evidence. *Zenith Radio Corp. v. Matsushita Elec. Indus. Co., Ltd.*, E.D.Pa.1980, 494 F.Supp. 1190. [Summary Judgment](#) 52

Resolution of doubts, considerations governing motion

When ruling on summary judgment motion, district court must resolve any factual issues of controversy in favor of nonmovant only in the sense that, where facts specifically averred by nonmovant contradict facts specifically averred by movant, motion must be denied. *Lujan v. National Wildlife Federation*, U.S.Dist.Col.1990, 110 S.Ct. 3177, 497 U.S. 871, 111 L.Ed.2d 695. [Summary Judgment](#) 75

In reviewing the pleadings, depositions, answers to interrogatories, admissions and affidavits to determine whether a genuine issue of material fact exists a court must resolve all reasonable doubts in favor of the opponent. *U. S. v. An Article of Food Consisting of 345/50-Pound Bags*, C.A.5 (Ga.) 1980, 622 F.2d 768. [Summary Judgment](#) 75

When court considers motion for summary judgment it must resolve all ambiguities in favor of party against whom summary judgment is sought. *Heyman v. Commerce & Industry Ins. Co.*, C.A.2 (Conn.) 1975, 524 F.2d 1317. See, also, *Security Nat. Bank v. Belleville Livestock Commission Co.*, C.A.Ky.1979, 619 F.2d 840; *Westhemeco Ltd. v. New Hampshire Ins. Co.*, D.C.N.Y.1979, 484 F.Supp. 1158; *Tondas v. Amateur Hockey Ass'n of U.S.*, D.C.N.Y.1977, 438 F.Supp. 310; *Trigo Hnos., Inc. v. Premium Wholesale Groceries, Inc.*, D.C.N.Y.1976, 424 F.Supp. 1125; *U.S. v. Pridgen*, D.C.N.Y.1975, 403 F.Supp. 1109; *Chicago & N.W. Ry. Co. v. Hoppers Packing Co., Inc.*, D.C.Iowa 1973, 363 F.Supp. 697. [Summary Judgment](#) 75; [Summary Judgment](#) 77

Once it is determined that material facts are in dispute, summary judgment may not be granted, and in making this determination doubts are to be resolved against granting of summary judgment. *Weiss v. Kay Jewelry Stores, Inc.*, C.A.D.C.1972, 470 F.2d 1259, 152 U.S.App.D.C. 350. [Summary Judgment](#) 74

If on proofs adduced in support of motion for summary judgment any doubt remains as to existence of genuine issue of material fact, such doubt must be resolved against movant for summary judgment, and motion for summary judgment must be denied. *Consolidated Laboratories, Inc. v. Shandon Scientific Co.*, C.A.7 (Ill.) 1969, 413 F.2d 208. [Summary Judgment](#) 75

If, upon the proof, adduced in support of a motion for summary judgment, and doubt remains as to the existence of a genuine issue of material fact, such doubt must be resolved against movant and the motion must be denied. *Zahora v. Harnischfeger Corp.*, C.A.7 (Ind.) 1968, 404 F.2d 172. [Summary Judgment](#) 75

In ruling on a motion for summary judgment, all doubts as to existence of a genuine issue as to any material fact must be resolved against the moving party, and if when so viewed, reasonable men might reach different conclusions, the motion should be denied and the case tried on its merits. *Empire Electronics Co. v. U. S.*, C.A.2 (N.Y.) 1962, 311 F.2d 175. [Summary Judgment](#) 75

All reasonable doubts touching existence of genuine issue as to material fact must be resolved against movant. *U.S. v. Farmers Mut. Ins. Ass'n of Kiron, Iowa*, C.A.8 (Iowa) 1961, 288 F.2d 560. See, also, *Hector v. Wiens*, C.A.Mont.1976, 533 F.2d 429; *Aulds v. Foster*, C.A.La.1973, 484 F.2d 945; *Whitley v. Hartford Acc. and Indem. Co.*, N.D.Tex.1981, 532 F.Supp. 190, affirmed 670 F.2d 183; *Flammia v. Mite Corp.*, D.C.N.Y.1975, 401 F.Supp. 1121, affirmed 553 F.2d 93; *Central Nat. Ins. Co. of Omaha v. Royal Indem. Co.*, D.C.Neb.1972, 337 F.Supp. 319; *Mickle v. Lipstock*, D.C.S.C.1965, 39 F.R.D. 58. [Summary Judgment](#) 75

Standard of proof, considerations governing motion--Generally

During its summary judgment analysis, district court is required to analyze summary judgment motions under standard of proof relevant to the case or issue. [Vandeventer v. Wabash Nat. Corp.](#), N.D.Ind.1994, 867 F.Supp. 790, on reconsideration 887 F.Supp. 1178. Summary Judgment 🏠 80

---- Jury trial, standard of proof, considerations governing motion

Entry of summary judgment indicates that no reasonable jury could return verdict for losing party. [Coach Leatherware Co., Inc. v. AnnTaylor, Inc.](#), C.A.2 (N.Y.) 1991, 933 F.2d 162, 18 U.S.P.Q.2d 1907. Summary Judgment 🏠 50

Summary judgment will be denied where evidence is such that reasonable jury could return verdict for nonmoving party. [Hogan v. Northwest Airlines, Inc.](#), D.Minn.1995, 880 F.Supp. 685. Summary Judgment 🏠 50

Summary judgment is to be granted only where evidence is such that no reasonable jury could return verdict for nonmoving party. [Belmore v. City Pages, Inc.](#), D.Minn.1995, 880 F.Supp. 673, 34 U.S.P.Q.2d 1295. Summary Judgment 🏠 50

Substance over form, considerations governing motion

Where effect of trial court's action in condemnation suit was merely to withdraw from jury the consideration of evidence as to severance damages and to withdraw such issue from jury, substance rather than form was controlling, and fact that court stated, after evidence was in, that court was granting motion for summary judgment on the issue was immaterial. [International Paper Co. v. U.S.](#), C.A.5 (Ga.) 1955, 227 F.2d 201. Eminent Domain 🏠 219

Sympathy of court, considerations governing motion

Though court may feel more in sympathy with one view of facts than with other, as long as there remains genuine issue of fact, summary judgment should not be granted. [Harford v. Smith](#), N.D.W.Va.1967, 272 F.Supp. 831. Summary Judgment 🏠 45(1); Summary Judgment 🏠 52

Usefulness of trial, considerations governing motion

Granting of motion for summary judgment is exception rather than the rule, but it is tool made available to courts for their proper use when nothing is to be gained by full trial. [Lovable Co. v. Honeywell, Inc.](#), C.A.5 (Ga.) 1970, 431 F.2d 668. Summary Judgment 🏠 1

Summary judgment is proper where trial would serve no useful purpose. [Miller v. Western Bd. of Adjusters, Inc.](#), C.A.9 (Cal.) 1970, 427 F.2d 175. Summary Judgment 🏠 1

Summary judgment is proper when it can be shown that trial would serve no useful purpose. [Windham v. Wyeth Laboratories, Inc.](#), S.D.Miss.1992, 786 F.Supp. 607. Summary Judgment 🏠 1

Summary judgment should be sparingly awarded and not granted wherever there is either a genuine issue of material fact or whenever inferences arising from testimony have to be weighed to reach a conclusion, or where the law is doubtful or otherwise unsettled; nevertheless, summary judgment procedure has viability, and is to be utilized where it clearly appears, that facts are undisputed, principles of law are settled and no useful purpose would be served by requiring the parties to go to plenary trial over issues raised by motion for summary judgment. [Ivey's Plumbing & Elec. Co., Inc. v. Petrochem Maintenance, Inc.](#), N.D.Miss.1978, 463 F.Supp. 543. Summary Judgment 🏠 4; Summary Judgment 🏠 45(1)

While it is true that summary judgment should only be granted through the exercise of great restraint, it is equally true that summary judgment is proper where trial would serve no useful purpose. [Leeds Music Ltd. v. Robin](#), S.D.Ohio 1973, 358 F.Supp. 650, 36 Ohio Misc. 1, 179 U.S.P.Q. 413, 65 O.O.2d 20. Summary Judgment 🏠 2

Summary judgment procedure is in nature of pretrial inquiry brought on by motion of party for favorable determination that trial is unnecessary because there is no genuine issue as to any material fact and that, on established facts, movant is entitled to judgment as matter of law. [Becker v. Safelite Glass Corp.](#), D.C.Kan.1965, 244 F.Supp. 625. Summary Judgment 🏠 45(2)

Miscellaneous considerations governing motion

Multidistrict litigation (MDL) court could rule on omnibus dispositive motion prior to transfer, on claim that manufacturer failed to warn patients that drug would increase their risk of developing type 2 diabetes, where no plaintiff claimed that she could produce expert on specific causation that would survive *Daubert* if court's ruling was correctly decided; remanding without ruling on summary judgment would have been inefficient, costly, and contrary to purposes of MDL statute, court was familiar with science and issues present and could dispose of issues far more quickly and efficiently than dozens of courts spread across country, and court was competent to consider law of multiple jurisdictions. [In re Lipitor \(Atorvastatin Calcium\) Marketing, Sales Practices and Products Liability Litigation, D.S.C.2017, 226 F.Supp.3d 557, affirmed 892 F.3d 624. Federal Courts 📌 2958](#)

In declaratory judgment action brought by insurer seeking determination that it had no duty to defend, under business automobile insurance policy, in underlying automobile accident, even though insured parties were in default, court would consider insurer's motion for summary judgment against remaining defendants who were injured third parties; any judgment entered against non-defaulting parties would necessarily affect the rights of defaulting parties, but injured third parties had right to proceed on their own behalf. [Canal Ins. Co. v. YMV Transport, Inc., W.D.Wash.2011, 867 F.Supp.2d 1099. Insurance 📌 3542](#)

Plaintiff's motion for summary judgment was not proper where plaintiff's motion addressed potential defenses as opposed to presentation of its own claims. [Gould, Inc. v. CNA, M.D.Pa.1992, 809 F.Supp. 328. Summary Judgment 📌 277\(1\)](#)

The grant of a motion for summary judgment is particularly appropriate where trial on the merits would reveal no additional data and where the facts and inferences point so overwhelmingly in favor of one party that the court believes that reasonable men could not arrive at but one verdict. [U. S. v. Fourteen \(14\) Handguns, S.D.Tex.1981, 524 F.Supp. 395. Summary Judgment 📌 94](#)

If trial of matter would develop no additional evidence which would in any way serve to alter court's resolution of case, summary judgment is mandated. [Handgards, Inc. v. Johnson and Johnson, N.D.Cal.1975, 413 F.Supp. 921. Summary Judgment 📌 41](#)

Presence of issues that might serve as bar to summary judgment for plaintiff would not preclude summary judgment for defendant where defendant was otherwise entitled thereto. [Baeszler v. Mobil Oil Corp., S.D.N.Y.1973, 375 F.Supp. 1220. Summary Judgment 📌 271](#)

Findings of district court in denying plaintiff's motion for preliminary injunction could not be basis for defendant's motion for summary judgment. [Penn Galvanizing Co. v. Lukens Steel Co., D.C.Pa.1973, 59 F.R.D. 74. Summary Judgment 📌 230](#)

Where defendant failed to comply with rules pertaining to pretrial procedure, ignored an order and failed to respond to plaintiff's motion for summary judgment, judgment was ordered in favor of plaintiff. [Uxmal Corp. Limited v. Wall Industries, Inc., S.D.Fla.1972, 55 F.R.D. 219, 173 U.S.P.Q. 253. Summary Judgment 📌 282](#)

QUESTIONS OF FACT

Considerations governing questions of fact generally

Where the record taken as a whole could not lead a rational trier of fact to find for the summary judgment nonmovant, there is no genuine issue for trial. [Ricci v. DeStefano, U.S.2009, 129 S.Ct. 2658, 557 U.S. 557, 174 L.Ed.2d 490. Summary Judgment 📌 45\(1\)](#)

An issue does not lose its factual character, as would require a factual determination by the trier of fact, rather than determination as a matter of law on summary judgment, merely because its resolution is dispositive of an ultimate constitutional question. [Posey v. Lake Pend Oreille School Dist. No. 84, C.A.9 \(Idaho\) 2008, 546 F.3d 1121. Summary Judgment 📌 111](#)

Summary judgment is warranted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. [Ledbetter v. City of Topeka, Kan., C.A.10 \(Kan.\) 2003, 318 F.3d 1183. Summary Judgment 📌 45\(2\); Summary Judgment 📌 301](#)

For summary judgment to be appropriate, pleadings, depositions, admissions and answers to interrogatories, together with affidavits, must demonstrate that no genuine issue of material fact remains. *Sims v. Monumental General Ins. Co.*, C.A.5 (La.) 1992, 960 F.2d 478, rehearing denied. [Summary Judgment](#) 45(1); [Summary Judgment](#) 301

Both summary judgment motion and motion to dismiss for failure to state claim are properly granted when moving party establishes that there is no genuine issue as to any material fact. *Collins v. Nagle*, C.A.6 (Ky.) 1989, 892 F.2d 489. [Federal Civil Procedure](#) 1772; [Summary Judgment](#) 45(1)

To create a question of fact, adverse party responding to properly made and supported summary judgment motion must set forth specific facts showing that there is a genuine issue for trial. *Posey v. Skyline Corp.*, C.A.7 (Ind.) 1983, 702 F.2d 102, certiorari denied 104 S.Ct. 392, 464 U.S. 960, 78 L.Ed.2d 336. [Summary Judgment](#) 77; [Summary Judgment](#) 286

When the party against whom summary judgment is sought comes forth with affidavits or other material obtained through discovery that generates uncertainty as to true state of any material fact, the procedural weapon of summary judgment is inappropriate. *Quinn v. Syracuse Model Neighborhood Corp.*, C.A.2 (N.Y.) 1980, 613 F.2d 438. [Summary Judgment](#) 316

Factual issue is "genuine" for summary judgment purposes if it may reasonably be resolved in favor of either party and, therefore, requires finder of fact to make choice between parties' differing versions of the truth at trial; by like token, "material" means that contested fact has potential to change outcome of suit under governing law if dispute over it is resolved favorably to nonmovant. *Rigau v. Pfizer Caribbean Corp.*, D.Puerto Rico 2007, 525 F.Supp.2d 272. [Summary Judgment](#) 46; [Summary Judgment](#) 47(2)

Four issues are to be addressed upon a motion for summary judgment: (1) whether the moving party has clearly and convincingly established the absence of material facts, (2) if so, whether nonmoving party presented sufficient facts to establish all the elements of the asserted claim or defense, (3) if factual support is presented by the nonmoving party, whether those facts are sufficiently plausible to support a jury verdict or judgment under the applicable law, and (4) whether there are any genuine factual issues with respect to those material facts under the governing law. *Dudley's Commercial and Industrial Coating, Inc. v. U.S., I.R.S., C.I.R.*, M.D.Tenn.2003, 292 F.Supp.2d 976. [Summary Judgment](#) 41

Existence of some alleged factual dispute between parties will not defeat otherwise properly supported motion for summary judgment; there must be genuine issue of material fact. *Damron v. Norfolk and Western Ry. Co.*, N.D.Ohio 1995, 925 F.Supp. 520. [Summary Judgment](#) 47(1)

Crux of summary judgment motion is whether evidence presents sufficient disagreement to require submission to jury or whether it is so one-sided that one party must prevail as matter of law. *Blanchard v. Simpson Plainwell Paper Co.*, W.D.Mich.1995, 925 F.Supp. 510. [Summary Judgment](#) 93

Mere existence of factual dispute does not by itself preclude granting of summary judgment; requirement for summary judgment is that there be no genuine issue of material fact. *Williams v. CSX Transp., Inc.*, S.D.Miss.1996, 925 F.Supp. 447, affirmed 139 F.3d 899. [Summary Judgment](#) 45(1)

"Genuine issue of material fact" for trial, which will preclude summary judgment, does not exist unless party opposing motion can adduce evidence which, when considered in light of that party's burden of proof at trial, could be basis for jury finding in that party's favor. *Alcman Services Corp. v. Samuel H. Bullock, P.C.*, D.N.J.1996, 925 F.Supp. 252, affirmed 124 F.3d 185. [Summary Judgment](#) 45(1); [Summary Judgment](#) 75

"Genuine issue" for purposes of precluding summary judgment is one that only a finder of fact can properly resolve because it may reasonably be resolved in favor of either party, and "material issue" is one that affects the outcome of the suit, and mere allegations or conjecture unsupported in the record are insufficient to raise genuine issue of material fact. *Zehner v. Central Berkshire Regional School Dist.*, D.Mass.1995, 921 F.Supp. 850. [Summary Judgment](#) 46

While some alleged factual disputes may exist, it is only genuine issues of material fact which preclude entry of summary judgment. [Time Warner Cable of New York City, a Div. of Time Warner Entertainment Co., L.P. v. Cable Box Wholesalers, Inc., D.Ariz.1996, 920 F.Supp. 1048. Summary Judgment 🔑 45\(1\)](#)

Only genuine issue of material and outcome determinative fact will defeat otherwise proper motion for summary judgment, and "genuine issue of material fact" exists only when there is sufficient evidence favoring nonmoving party for jury to return verdict for that party. [Zimbauer v. Milwaukee Orthopaedic Group, Ltd., E.D.Wis.1996, 920 F.Supp. 959. Summary Judgment 🔑 45\(1\)](#)

Mere existence of some alleged factual dispute between parties will not defeat otherwise properly supported motion for summary judgment; requirement is that there is no genuine issue of material fact. [Berry v. American Community Mut. Ins. Co., C.D.Ill.1994, 855 F.Supp. 256. Summary Judgment 🔑 46](#)

For purposes of summary judgment, a fact's materiality is determined by controlling substantive law, and an issue of fact is genuine when evidence is such that reasonable jury could return verdict for nonmovant. [Burnett v. Stagner Hotel Courts, Inc., N.D.Ga.1993, 821 F.Supp. 678, affirmed 42 F.3d 645. Summary Judgment 🔑 46; Summary Judgment 🔑 47\(2\)](#)

In evaluating appropriateness of summary judgment, three steps are necessary: determining whether fact is material, determining whether there is genuine issue for trier of fact as determined by documents submitted to court, and considering that evidence in light of appropriate standard of proof. [Alam v. Reno Hilton Corp., D.Nev.1993, 819 F.Supp. 905. Summary Judgment 🔑 45\(1\); Summary Judgment 🔑 80](#)

To succeed on motion for summary judgment, moving party must establish that no genuine issue of material fact remains in dispute; issue is "genuine issue" only if there is sufficient evidence for reasonable jury to find for nonmoving party and factual dispute involves "material fact" only if it might affect outcome of action under governing law. [Garner v. Township of Wrightstown, E.D.Pa.1993, 819 F.Supp. 435, affirmed 16 F.3d 403. Summary Judgment 🔑 46; Summary Judgment 🔑 47\(1\)](#)

By its very terms, summary judgment standard provides that mere existence of some alleged factual dispute between parties will not defeat otherwise properly supported motion; requirement is that there is no genuine issue of material fact. [Scott v. School Dist. No. 6, D.Wyo.1993, 815 F.Supp. 424. Summary Judgment 🔑 45\(1\); Summary Judgment 🔑 47\(1\)](#)

Uncertainty regarding true state of any material fact will defeat summary judgment motion. [County of Westchester v. Town of Greenwich, Conn., S.D.N.Y.1992, 793 F.Supp. 1195, question certified 986 F.2d 624, certified question answered 629 A.2d 1084, 227 Conn. 495, answer to certified question conformed to 9 F.3d 242, certiorari denied 114 S.Ct. 2102, 511 U.S. 1107, 128 L.Ed.2d 664, on remand 870 F.Supp. 496. Summary Judgment 🔑 45\(1\)](#)

Threshold inquiry on motion for summary judgment is whether there are any genuine factual issues that properly can be resolved only by finder of fact because they may reasonably be resolved in favor of either party. [Petroleo Brasileiro, S.A., Petrobras v. Nalco Chemical Co., D.N.J.1992, 784 F.Supp. 160, affirmed 977 F.2d 569. Summary Judgment 🔑 45\(1\)](#)

In evaluating appropriateness of summary judgment, three steps are necessary: determining whether fact is material; determining whether there is genuine issue for trier of fact, as determined by documents submitted to court; and considering that evidence in light of appropriate standard of proof. [Hutton v. General Motors Corp., D.Nev.1991, 775 F.Supp. 1373. Summary Judgment 🔑 45\(1\)](#)

Where district court grants summary judgment, there must be no genuine issue of any material fact, and moving party must be entitled to judgment as a matter of law. [Ozark Air Lines, Inc. v. Air Line Pilots Ass'n, Intern., E.D.Mo.1983, 577 F.Supp. 487, affirmed 744 F.2d 1347, on rehearing 761 F.2d 1259, certiorari denied 106 S.Ct. 232, 474 U.S. 903, 88 L.Ed.2d 231. Summary Judgment 🔑 45\(2\)](#)

Disputed facts, questions of fact--Generally

Summary judgment may be given under this rule only if there is no dispute as to any material fact. [Fountain v. Filson, U.S. Dist. Col. 1949, 69 S.Ct. 754, 336 U.S. 681, 93 L.Ed. 971, rehearing denied 69 S.Ct. 1153, 337 U.S. 921, 93 L.Ed. 1730.](#) See, also, [Meredith v. Hardy, C.A. Miss. 1977, 554 F.2d 764](#); [Indiana General Corp. v. Lockheed Aircraft Corp., C.A. Cal. 1968, 408 F.2d 294](#); [McHenry v. Ford Motor Co., C.A. Mich. 1959, 269 F.2d 18.](#) Summary Judgment 🏹 43

Mere existence of some alleged factual dispute between parties will not defeat otherwise properly supported motion for summary judgment; requirement is that there be no genuine issue of material fact. [Fletcher v. Atex, Inc., C.A. 2 \(N.Y.\) 1995, 68 F.3d 1451.](#) Summary Judgment 🏹 45(1)

Mere existence of alleged factual dispute will not defeat otherwise properly supported motion for summary judgment. [Nelson v. Holmes Freight Lines, Inc., C.A. 10 \(Colo.\) 1994, 37 F.3d 591.](#) Summary Judgment 🏹 93

Party seeking summary judgment may meet its initial burden of showing district court that there is absence of genuine dispute over any material fact by producing evidence showing absence of genuine issue of material fact or by showing that there is absence of evidence to support nonmoving party's case. [Tanner v. Caplin & Drysdale, C.A. 6 \(Tenn.\) 1994, 24 F.3d 874,](#) rehearing and suggestion for rehearing en banc denied. Summary Judgment 🏹 77

Summary judgment may not issue when material issues of fact requiring trial to resolve are present. [D.L. Auld Co. v. Chroma Graphics Corp., C.A. Fed. 1983, 714 F.2d 1144, 219 U.S.P.Q. 13.](#) Summary Judgment 🏹 46

Where no factual disputes are present, or where undisputed facts demonstrate that one party is entitled to judgment as matter of law, summary judgment in favor of that party is appropriate. [Collins v. American Optometric Ass'n, C.A. 7 \(Ind.\) 1982, 693 F.2d 636.](#) Summary Judgment 🏹 44

Summary judgment is not appropriate where material facts remain in dispute. [Inland Oil and Transport Co. v. U. S., C.A. 8 \(Mo.\) 1979, 600 F.2d 725,](#) certiorari denied [100 S.Ct. 522, 444 U.S. 991, 62 L.Ed.2d 420.](#) Summary Judgment 🏹 45(1)

Disposition by summary judgment was appropriate where there were no genuine disputes as to any material fact. [Case & Co., Inc. v. Board of Trade of City of Chicago, C.A. 7 \(Ill.\) 1975, 523 F.2d 355.](#) Summary Judgment 🏹 45(1)

Where all material facts were before the trial court in undisputed form, case was ripe for summary judgment. [Zweig v. Hearst Corp., C.A. 9 \(Cal.\) 1975, 521 F.2d 1129,](#) certiorari denied [96 S.Ct. 469, 423 U.S. 1025, 46 L.Ed.2d 399.](#) Summary Judgment 🏹 48

Summary judgment must flow only as a matter of law from undisputed facts. [Shehi v. Southwestern Bell Telephone Co., C.A. 10 \(Kan.\) 1967, 382 F.2d 627.](#) Summary Judgment 🏹 48

Borrower who was pro se plaintiff failed to controvert facts that lender and trust presented in support of their motions for summary judgment, and, thus, trial court would consider such facts undisputed when ruling on motions, where lender and trust each sent borrower notices advising that he could not oppose summary judgment by resting on allegations in his complaint instead of submitting evidence to counter facts asserted by lender and trust, and notices included full texts of rules governing summary judgment, as required by local rule. [Hampton v. Barclays Bank Delaware, D.Kan. 2020, 478 F.Supp.3d 1113,](#) affirmed [2021 WL 3237082.](#) Summary Judgment 🏹 282; Summary Judgment 🏹 291

A mere disagreement about a material issue of fact does not preclude summary judgment. [Sharer v. Oregon, D.Or. 2007, 481 F.Supp.2d 1156,](#) adhered to on reconsideration [2007 WL 9718957.](#) Summary Judgment 🏹 45(1)

Alleged factual dispute between parties as to some ancillary matter will not defeat otherwise properly supported motion for summary judgment. [Clope v. West Clermont Local School Dist. Bd. of Educ., S.D. Ohio 2006, 409 F.Supp.2d 927.](#) Summary Judgment 🏹 43

Alleged factual dispute existing between parties is not sufficient to defeat properly supported summary judgment motion; there must be genuine issue of material fact. [Austin](#)

v. Bell, M.D.Tenn.1996, 938 F.Supp. 1308, affirmed in part, reversed in part 126 F.3d 843, certiorari denied 118 S.Ct. 1526, 523 U.S. 1079, 140 L.Ed.2d 677, certiorari denied 118 S.Ct. 1547, 523 U.S. 1088, 140 L.Ed.2d 695, appeal after new sentencing hearing 2001 WL 242576, affirmed 87 S.W.3d 447, rehearing denied, certiorari denied 123 S.Ct. 1899, 538 U.S. 1001, 155 L.Ed.2d 829. Summary Judgment 📌 45(1)

Disputed facts must be those that might affect outcome of suit to properly preclude summary judgment. *Pollard v. Azcon Corp.*, N.D.Ill.1995, 904 F.Supp. 762. Summary Judgment 📌 47(1)

For summary judgment purposes, "disputed material facts" are those that might affect outcome of suit under governing law. *Barnstead Broadcasting Corp. v. Offshore Broadcasting Corp.*, D.D.C.1995, 886 F.Supp. 874. Summary Judgment 📌 47(2)

Establishing mere existence of some alleged factual dispute between the parties will not defeat otherwise properly supported motion for summary judgment; rather, responding party must show existence of disputed material fact in light of the substantive law. *EJS-ASOC Ticaret ve Danismanlik Ltd. Sti v. American Tel. & Tel. Co.*, S.D.N.Y.1994, 886 F.Supp. 331. Summary Judgment 📌 47(1); Summary Judgment 📌 47(2)

Irrelevant or unnecessary facts do not preclude summary judgment even when they are in dispute. *Hartford Fire Ins. Co. v. Pure Air on the Lake Ltd. Partnership*, N.D.Ind.1994, 859 F.Supp. 1189. Summary Judgment 📌 80

Only disputes over facts that might affect outcome of suit under governing law will properly preclude entry of summary judgment; factual disputes that are irrelevant or unnecessary will not be counted. *Berry v. American Community Mut. Ins. Co.*, C.D.Ill.1994, 855 F.Supp. 256. Summary Judgment 📌 47(2)

Alleged factual dispute existing between parties is not sufficient to defeat properly supported summary judgment motion; rather, there must be genuine issue of material fact. *AMC Mortg. Co., Inc. v. Resolution Trust Corp.*, M.D.Tenn.1994, 846 F.Supp. 1323. Summary Judgment 📌 45(1)

For disputed facts to prevent summary judgment, they must be facts which, under substantive law governing issue, might affect outcome of suit. *Lambton Mfg. Ltd. v. Young*, W.D.Ky.1993, 833 F.Supp. 610, 27 U.S.P.Q.2d 1775. Summary Judgment 📌 47(1)

If moving party is still entitled to judgment as matter of law after all facts alleged by nonmoving party are resolved in his favor as true, any remaining factual disputes are neither genuine or material to prevent court from granting motion for summary judgment. *Frutico S.A. de C.V. v. Bankers Trust Co.*, S.D.N.Y.1993, 833 F.Supp. 288. Summary Judgment 📌 46

Summary judgment is improper if court finds genuine issue of material fact; however, mere existence of some alleged factual dispute will not defeat otherwise properly supported motion. *Fargo Women's Health Organization v. Sinner*, D.N.D.1993, 819 F.Supp. 862, stay denied 1993 WL 603600, affirmed 18 F.3d 526. Summary Judgment 📌 45(1); Summary Judgment 📌 95

Existence of some factual dispute does not automatically mean that summary judgment will be denied; facts in dispute must be material and present triable issue. *Naantaanbuu v. Abernathy*, S.D.N.Y.1993, 816 F.Supp. 218. Summary Judgment 📌 45(1); Summary Judgment 📌 47(1)

Mere existence of factual dispute is not, by itself, sufficient to bar summary judgment; rather, disputed fact must be outcome determinative, and irrelevant or unnecessary facts do not preclude summary judgment even when they are in dispute. *Allstate Ins. Co. v. Shockley*, S.D.Ind.1991, 793 F.Supp. 852, affirmed 980 F.2d 733. Summary Judgment 📌 47(1)

Summary judgment is appropriate when motions debate only the significance of undisputed facts. *Jennings v. New York State Office of Mental Health*, S.D.N.Y.1992, 786 F.Supp. 376, 123 A.L.R. Fed. 661, affirmed 977 F.2d 731. Summary Judgment 📌 48

Essentially, question in ruling on motion for summary judgment and on motion for directed verdict is whether evidence presents sufficient disagreement to require submission to jury

or whether it is so one-sided that one party must prevail as matter of law. [International Broth. of Elec. Workers, Local Union No. 124 v. Alpha Elec. Co., Inc.](#), W.D.Mo.1991, 759 F.Supp. 1416. [Federal Civil Procedure](#) 🗝️ 2142.1; [Summary Judgment](#) 🗝️ 80

Mere existence of factual dispute is insufficient alone to bar summary judgment; rather dispute must be outcome determinative under prevailing law. [Twin City Bank v. Verex Assur. Inc.](#), E.D.Ark.1990, 733 F.Supp. 67. [Summary Judgment](#) 🗝️ 47(1)

---- Historic facts, disputed facts, questions of fact

Summary judgment may be improper even where historic facts are free of controversy. [N. L. R. B. v. Smith Industries, Inc.](#), C.A.5 (Tex.) 1968, 403 F.2d 889. [Summary Judgment](#) 🗝️ 95

---- Authentic dispute, disputed facts, questions of fact

Only clear showing of authentic nondispute will satisfy requirement of this rule that demands absence of triable fact issues. [Tele-Radio Systems Ltd. v. De Forest Electronics, Inc.](#), D.C.N.J.1981, 92 F.R.D. 371. [Summary Judgment](#) 🗝️ 84

---- Bona fide dispute, disputed facts, questions of fact

Summary judgment procedure may not be invoked where there is bona fide factual dispute between the parties. [Gauck v. Meleski](#), C.A.5 (Fla.) 1965, 346 F.2d 433. [Summary Judgment](#) 🗝️ 43

This rule should be cautiously invoked to the end that parties may always be afforded a trial where there is a bona fide dispute of facts between them. [United Meat Co. v. R.F.C.](#), C.A.D.C.1949, 174 F.2d 528, 85 U.S.App.D.C. 9. See, also, [Diplomat Elec., Inc. v. Westinghouse Elec. Supply Co., Division of Westinghouse Elec. Corp.](#), C.A.Fla.1967, 378 F.2d 377; [Minnesota Min. & Mfg. Co. v. Superior Insulating Tape Co.](#), C.A.Mo.1960, 284 F.2d 478; [SMS Mfg. Co. v. U.S. Mengel Plywoods](#), C.A.Okl.1955, 219 F.2d 606. [Summary Judgment](#) 🗝️ 43

Though litigants should always be afforded trial if there is a bona fide dispute of facts between them, where there is not the slightest doubt as to the facts, and, if case were tried, evidence relied on by plaintiffs would be insufficient to justify submission of case to jury, court will grant defendant's motion for summary judgment. [Polly Chin Sugai v. General Motors Corp.](#), D.C.Idaho 1956, 137 F.Supp. 696. [Summary Judgment](#) 🗝️ 54

---- Conclusions drawn from facts, disputed facts, questions of fact

Summary judgment is not appropriate even if there is no dispute as to evidentiary facts but only as to conclusions to be drawn therefrom. [Charbonnages de France v. Smith](#), C.A.4 (W.Va.) 1979, 597 F.2d 406. [Summary Judgment](#) 🗝️ 93

Conclusory or speculative testimony in affidavits and moving papers is insufficient to raise a genuine issue of fact and defeat summary judgment; conversely, a genuine dispute over a material fact exists if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or jury to resolve the differing versions of the truth. [Centurion Medical Liability Protective Risk Retention Group Inc. v. Gonzalez](#), C.D.Cal.2017, 296 F.Supp.3d 1212. [Summary Judgment](#) 🗝️ 46; [Summary Judgment](#) 🗝️ 95; [Summary Judgment](#) 🗝️ 316

Summary judgment on issues that are more often left for a jury is generally appropriate where facts are undisputed and only one conclusion can reasonably be drawn from them. [Edwards v. Consolidated Rail Corp.](#), D.C.D.C.1983, 567 F.Supp. 1087, affirmed 733 F.2d 966, 236 U.S.App.D.C. 135, certiorari denied 105 S.Ct. 252, 469 U.S. 883, 83 L.Ed.2d 189. [Summary Judgment](#) 🗝️ 48

---- Real dispute, disputed facts, questions of fact

When a movant for summary judgment makes out a convincing showing that genuine issues of fact are lacking, adversary is required to adequately demonstrate by receivable facts that a real, not formal controversy exists. [Curl v. International Business Machines Corp.](#), C.A.5 (Ga.) 1975, 517 F.2d 212, rehearing denied 521 F.2d 814, certiorari denied 96 S.Ct. 1683, 425 U.S. 943, 48 L.Ed.2d 187. [Summary Judgment](#) 🗝️ 84

If there is a real factual dispute between parties relevant to legal claim, they must be afforded trial and case cannot be disposed of by summary judgment. [Ecology Center of Louisiana, Inc. v. Coleman](#), C.A.5 (La.) 1975, 515 F.2d 860. [Summary Judgment](#) 🗝️ 43

Insurer's inability to admit or deny whether properties were damaged by flooding earlier did not indicate genuine dispute of fact on its motion for summary judgment, in action by insured municipality against insurer under California law alleging breach of general liability insurance policies for not defending or indemnifying it in underlying actions alleging failure to develop and maintain storm drains which caused flooding and damage to owners' real property, since insurer's perspective on that question did not provide any meaningful evidence because California law focused on when damage occurred or was known or should have been known to insured. [American Bankers Insurance Company of Florida v. National Fire Insurance Company of Hartford, N.D.Cal.2020, 488 F.Supp.3d 892. Summary Judgment](#) 📌 166

A mere disagreement about a material issue of fact does not preclude summary judgment. [Kreidler v. Taylor, D.Or.2007, 473 F.Supp.2d 1090. Summary Judgment](#) 📌 45(1)

Mere existence of some metaphysical doubt concerning facts will not suffice to defeat summary judgment motion, nor will speculation or conjecture as to true nature of facts. [Miloslavsky v. AES Engineering Soc., Inc., S.D.N.Y.1992, 808 F.Supp. 351, affirmed 993 F.2d 1534, certiorari denied 114 S.Ct. 68, 510 U.S. 817, 126 L.Ed.2d 37. Summary Judgment](#) 📌 54

If there is a real dispute as to material facts, a summary judgment cannot be allowed. [Molinaro v. Watkins-Johnson CEI Division, D.C.Md.1973, 359 F.Supp. 467, 178 U.S.P.Q. 211. Summary Judgment](#) 📌 45(1)

---- Reasonableness of dispute, disputed facts, questions of fact

Though objective test of official immunity was adopted to reduce potential for factual disputes which would preclude granting official defendant's motion for summary judgment on immunity claim, this rule still compels trial when there is a genuine issue of fact, such as what a reasonable person in like circumstances should have known. [McSurely v. McClellan, C.A.D.C.1982, 697 F.2d 309, 225 U.S.App.D.C. 67. Summary Judgment](#) 📌 13

Where record discloses no material fact or material inferences that might permissibly have been drawn from these facts over which reasonable men could differ and where only genuinely disputed issue is the legal question, case is ripe for summary judgment. [Central Oil & Supply Corp. v. U. S., C.A.5 \(La.\) 1977, 557 F.2d 511, rehearing denied 562 F.2d 1257, rehearing denied 562 F.2d 1258. Summary Judgment](#) 📌 13

Genuine issues, questions of fact--Generally

On motion for summary judgment, unlike motion to dismiss for lack of standing, plaintiff cannot prevail merely by alleging injury; rather, plaintiff must establish that there exists no genuine issue of material fact as to justiciability or the merits. [Department of Commerce v. U.S. House of Representatives, U.S.Dist.Col.1999, 119 S.Ct. 765, 525 U.S. 316, 142 L.Ed.2d 797. Summary Judgment](#) 📌 32

Summary judgment should be entered only when pleadings, depositions, affidavits and admissions filed in a case show no genuine issue as to any material fact. [Poller v. Columbia Broadcasting System, Inc., U.S.Dist.Col.1962, 82 S.Ct. 486, 368 U.S. 464, 7 L.Ed.2d 458. See, also, Vette Co. v. Aetna Cas. & Sur. Co., C.A.8 \(Mo.\) 1980, 612 F.2d 1076. Summary Judgment](#) 📌 45(1); [Summary Judgment](#) 📌 301

The mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact. [Estate of Larsen ex rel. Sturdivan v. Murr, C.A.10 \(Colo.\) 2008, 511 F.3d 1255. Summary Judgment](#) 📌 45(1)

Court should grant motion for summary judgment only when evidence, viewed in light most favorable to nonmoving party, presents no genuine issue of material fact, i.e., when reasonable minds cannot differ as to import of evidence before court. [Commander Oil Corp. v. Advance Food Service Equipment, C.A.2 \(N.Y.\) 1993, 991 F.2d 49. Summary Judgment](#) 📌 75

To be considered "genuine" for summary judgment purposes, a material issue of fact must be established by sufficient evidence supporting the claimed factual dispute to require a jury or judge to resolve the parties' differing versions of the truth at trial; the evidence manifesting the dispute must be "substantial," going beyond the allegations of the

complaint. [Hahn v. Sargent, C.A.1 \(Mass.\) 1975, 523 F.2d 461](#), certiorari denied [96 S.Ct. 1495, 425 U.S. 904, 47 L.Ed.2d 754](#). [Summary Judgment](#) 📌 80

Genuine issue of material fact as to whether project manager for outdoor obstacle race course followed event stager's routine practice of inspecting an obstacle after learning that obstacle-race participant had been injured on that obstacle, if it could be found to have contributed to participant's injury, precluded summary judgment in favor of event stager in participant's action against event stager for negligence under Minnesota law. [Anderson v. Rugged Races LLC, D.Minn.2020, 496 F.Supp.3d 1270](#), affirmed [42 F.4th 955](#). [Summary Judgment](#) 📌 242

For summary judgment to be appropriate, there must be more than a metaphysical doubt as to material facts. [Janneh v. Regency Hotel, Binghamton, N.D.N.Y.1994, 870 F.Supp. 37](#), reconsideration denied [879 F.Supp. 5](#), petition denied [116 S.Ct. 1857, 517 U.S. 1224, 134 L.Ed.2d 957](#), rehearing denied [117 S.Ct. 23, 518 U.S. 1047, 135 L.Ed.2d 1116](#). [Summary Judgment](#) 📌 54

---- Probative force as to controlling issue, genuine issues, questions of fact

Where tariff provided that shipper must pay costs of storing his goods if it was his own act or omission that forced carrier to store them, issue of whether shipper caused carrier to store freight was "genuine fact issue" within meaning of this rule in that it had probative force as to controlling issue. [Western Transp. Co. v. Wilson and Co., Inc., C.A.7 \(Ill.\) 1982, 682 F.2d 1227](#). [Summary Judgment](#) 📌 264

An issue is not "genuine," for purposes of establishing genuine issue of material fact necessary to defeat motion for summary judgment, if it is unsupported by evidence or is created by evidence that is "merely colorable" or "not significantly probative." [Dickson v. Amoco Performance Products, Inc., N.D.Ga.1994, 845 F.Supp. 1565](#). [Summary Judgment](#) 📌 46

---- Viable legal theory, genuine issues, questions of fact

Presence of a genuine issue of material fact precluding summary judgment is predicated on existence of a legal theory which can be considered viable under the nonmoving party's version of the facts; the factual dispute must be outcome determinative under prevailing law. [Holloway v. Pigman, C.A.8 \(Ark.\) 1989, 884 F.2d 365](#). [Summary Judgment](#) 📌 46; [Summary Judgment](#) 📌 47(1)

Showing of genuine issue for trial is predicated upon existence of legal theory which remains viable under asserted version of facts and which would entitle party opposing motion for summary judgment to judgment as matter of law. [Bushie v. Stenocord Corp., C.A.9 \(Ariz.\) 1972, 460 F.2d 116](#). See, also, [Friends of the Earth v. Coleman, C.A.Cal.1975, 513 F.2d 295](#); [A.I. Root Co. v. Computer Dynamics, Inc., N.D.Ohio 1985, 615 F.Supp. 727](#), affirmed [806 F.2d 673](#); [Dworman v. Mayor and Bd. of Aldermen, Governing Body of Town of Morristown, D.C.N.J.1974, 370 F.Supp. 1056](#). [Summary Judgment](#) 📌 45(2)

Issue must be based on viable legal theory in order to be "genuine" issue of material fact, for summary judgment purposes. [Swanson v. Fields, D.Kan.1993, 814 F.Supp. 1007](#), affirmed [13 F.3d 407](#). [Summary Judgment](#) 📌 46

Existence of a genuine issue of fact is predicated upon the existence of a legal theory which can be considered viable under the nonmoving party's version of the facts. [Blodgett v. Santa Cruz County, N.D.Cal.1981, 553 F.Supp. 1090](#), affirmed [698 F.2d 368](#). [Summary Judgment](#) 📌 45(1)

When plaintiff moves for summary judgment, its mission is to identify legal theory on which it relies, and then to demonstrate that facts that it has mustered entitle it to relief under that theory. [In re Jolly's Inc., Bkrcty.D.Minn.1995, 188 B.R. 832](#). [Bankruptcy](#) 📌 2164.1; [Summary Judgment](#) 📌 77

---- Admissibility of evidence, genuine issues, questions of fact

Party cannot attempt to create fact issue, for summary judgment purposes, with evidence of facts that cannot be proved at trial. [Geiserman v. MacDonald, C.A.5 \(Tex.\) 1990, 893 F.2d 787](#). [Summary Judgment](#) 📌 43

Requirement that a summary judgment affiant have personal knowledge and be competent to testify to matters asserted in affidavit also means that an affidavit's hearsay assertions

that would not be admissible at trial if testified to by the affiant is insufficient to create a genuine issue for trial. [Levine v. Smithtown Cent. School Dist., E.D.N.Y.2008, 565 F.Supp.2d 407](#). [Summary Judgment](#) 📌 315

A court's review of evidence extrinsic to the terms of a contract itself is permissible on a summary judgment motion where such evidence demonstrates that no genuine issue of material fact exists. [MSF Holding Ltd. v. Fiduciary Trust Co. Intern., S.D.N.Y.2006, 435 F.Supp.2d 285](#), affirmed on other grounds [235 Fed.Appx. 827, 2007 WL 1655636](#). [Summary Judgment](#) 📌 305

There is no genuine issue of material fact on motion for summary judgment if opposing party fails to offer evidence sufficient to establish existence of element essential to that party's case. [Naliielua v. State of Hawaii, D.Hawai'i 1991, 795 F.Supp. 1015](#), affirmed [963 F.2d 379](#). [Summary Judgment](#) 📌 51

---- Damages, genuine issues, questions of fact

Celebrity photographer and videographer abandoned cause of action seeking punitive damages against security guard for rapper, who allegedly caused injury to photographer by striking him while guard escorted rapper into building to appear on late night television program, entitling guard to partial summary judgment; even though photographer claimed that "exemplary" damages should be rewarded in connection with other causes of action, photographer did not refute guard's argument that New York law did not recognize separate cause of action for punitive damages nor that cause of action should be dismissed in response to guard's motion, and claim for "exemplary" damages was not relevant to guard's summary judgment argument as motion was limited to punitive damages cause of action. [Capak v. Epps, S.D.N.Y.2023, 662 F.Supp.3d 463](#). [Summary Judgment](#) 📌 63; [Summary Judgment](#) 📌 241

Genuine issue of material fact as to whether any conduct allegedly committed by truck leasing company was egregious precluded summary judgment on issue of whether wholesale distributor of meat and frozen food products was entitled to punitive damages on conversion claim against leasing company based on company's allegedly unlawful possession and retention of distributor's personal property left in vehicles that leasing company had leased to distributor, at time distributor repossessed vehicles. [Nebraskaland, Inc. v. River Street Idealease, LLC, D.N.J.2016, 188 F.Supp.3d 390](#). [Conversion And Civil Theft](#) 📌 233; [Summary Judgment](#) 📌 252

---- Weight and sufficiency of evidence, genuine issues, questions of fact

Debt collection law firm violated FDCPA by requesting attorney fees in its underlying state complaint for collection of credit card debt, where firm did not present any admissible evidence establishing its entitlement to collect fees at time of summary judgment motion; presentation of generic evidence that all credit cards contained attorney fees provisions was insufficient to create genuine issue of material fact for jury. [McCollough v. Johnson, Rodenburg & Lauinger, LLC, C.A.9 \(Mont.\) 2011, 637 F.3d 939](#). [Finance, Banking, And Credit](#) 📌 1494

Motions for summary judgment raised question whether issues, though in law material, were "genuine"; that is, such that substantial evidence can be offered to maintain. [Firemen's Mut. Ins. Co. v. Aponaug Mfg. Co., C.C.A.5 \(Miss.\) 1945, 149 F.2d 359](#). [Summary Judgment](#) 📌 101

Bank president's declaration that she sent copies of notice of assignment and assignment instrument to disbursing office designated in contract between federal agency and government contractor-assignor could not create issue of fact, for purposes of summary judgment motion, as to bank's compliance with disbursing officer notice requirements of Assignment of Contracts Act and Assignment of Claims Act when declaration was inconsistent with president's earlier deposition testimony and there was no evidentiary support for assertion in declaration. [Texas Nat. Bank v. U.S., Fed.Cl.2009, 86 Fed.Cl. 403](#). [United States](#) 📌 1061(3)

Material facts, questions of fact--Generally

Materiality of issue of fact is evaluated based on relevant substantive law, in determining whether summary judgment is appropriate. [National Solid Wastes Management Ass'n v. Voinovich, C.A.6 \(Ohio\) 1992, 959 F.2d 590](#), rehearing denied. [Summary Judgment](#) 📌 47(2)

A motion for summary judgment may only be granted if there are no remaining issues of material fact which, if believed by the trier of fact, would justify a finding for the party opposing that judgment. [Wahl v. Rexnord, Inc., C.A.3 \(N.J.\) 1980, 624 F.2d 1169, 206 U.S.P.Q. 865. Summary Judgment](#) 46

On a summary judgment motion, a court cannot decide the question of fact but must determine whether a "material" question of fact exists. [New Jersey Life Ins. Co. v. Getz, C.A.6 \(Ohio\) 1980, 622 F.2d 198. Summary Judgment](#) 45(1)

An immaterial factual dispute does not bar summary judgment. [British Airways Bd. v. Boeing Co., C.A.9 \(Wash.\) 1978, 585 F.2d 946, certiorari denied 99 S.Ct. 1790, 440 U.S. 981, 60 L.Ed.2d 241, rehearing denied 99 S.Ct. 2420, 441 U.S. 968, 60 L.Ed.2d 1074. Summary Judgment](#) 47(1)

Presence of triable issue of material fact is a bar to summary judgment. [Arney v. U. S., C.A.9 \(Cal.\) 1973, 479 F.2d 653. Summary Judgment](#) 45(1)

If there is an absence of material issues of fact then movant is entitled to summary judgment as a matter of law. [Commercial Iron & Metal Co. v. Bache & Co., Inc., C.A.10 \(Colo.\) 1973, 478 F.2d 39. Summary Judgment](#) 45(2)

If the issue as to a material fact dispositive of right or duty remains, case is not ripe for disposition by summary judgment and parties are entitled to a trial, but if no such fact issue remains then motion for summary judgment should be granted. [Ando v. Great Western Sugar Co., C.A.10 \(Wyo.\) 1973, 475 F.2d 531. Summary Judgment](#) 45(1)

Differences in parties' versions of the facts do not preclude summary judgment unless such differences are material to the outcome. [Kiess v. Eason, C.A.7 \(Ind.\) 1971, 442 F.2d 712. Summary Judgment](#) 45(1)

In order to withstand motion for summary judgment, facts placed in issue must be material. [Applegate v. Top Associates, Inc., C.A.2 \(N.Y.\) 1970, 425 F.2d 92. Summary Judgment](#) 45(1)

Motion for summary judgment should be granted in situations where factual issues are either irrelevant or spurious. [Bolack v. Underwood, C.A.10 \(N.M.\) 1965, 340 F.2d 816. Summary Judgment](#) 47(1)

An evidentiary difference as to an immaterial fact will not bar a summary judgment. [Robbins v. Gould, C.A.5 \(Fla.\) 1960, 278 F.2d 116. Summary Judgment](#) 93

Material issues of fact may not be tried and determined on motions for summary judgment. [Kasper v. Baron, C.A.8 \(S.D.\) 1951, 191 F.2d 737, on remand. Summary Judgment](#) 13

Former state university student's 107 paragraphs of additional material facts, which were included in her response to university defendants' 327 paragraphs of material facts in support of their motion for summary judgment in civil rights action, would not be stricken, although local summary judgment rule governing statements of material facts did not permit student to file her own additional material facts; disregarding additional material facts would make it impossible for district court to evaluate student's arguments opposing summary judgment, and waiver of student's opportunity to defend her claims on merits was too harsh a sanction, nor was requiring student to redraft her response to defendants' statement of material facts a viable option. [Williams v. Pennsylvania State University, M.D.Pa.2023, 697 F.Supp.3d 297. Summary Judgment](#) 286

To determine which facts are material, in a summary judgment proceeding, a court must look to the substantive law on which each claim rests. [Gill v. District of Columbia, D.D.C.2010, 751 F.Supp.2d 104, affirmed 2011 WL 3903367. Summary Judgment](#) 47(2)

---- Burden of proof, material facts, questions of fact

When the party moving for summary judgment asserts that the competent evidence clearly demonstrates that it is entitled to judgment and after the moving party has satisfied this burden, the onus shifts to the resisting party to show that there still exists a trial-worthy issue as to some material fact. [Delanoy v. Aerotek, Inc., D.Puerto Rico 2009, 614 F.Supp.2d 200. Summary Judgment](#) 78

---- Effect on outcome of litigation, material facts, questions of fact

"Material fact," which if in dispute will preclude summary judgment, is one that has potential to affect the outcome of a suit. [MacGlashing v. Dunlop Equipment Co., Inc., C.A.1 \(Mass.\) 1996, 89 F.3d 932. Summary Judgment](#) 🗝️ 47(1)

"Material facts" that will defeat otherwise supported motion for summary judgment are only those facts that might affect outcome of action under governing law. [Talley v. Bravo Pitino Restaurant, Ltd., C.A.6 \(Ky.\) 1995, 61 F.3d 1241. Summary Judgment](#) 🗝️ 47(1)

A "material fact," for summary judgment purposes, is one that might affect the outcome of the suit under governing law. [Coll v. PB Diagnostic Systems, Inc., C.A.1 \(Mass.\) 1995, 50 F.3d 1115. Summary Judgment](#) 🗝️ 47(2)

For purposes of determining whether summary judgment should be granted, term "genuine" means that evidence about the fact is such that reasonable jury could resolve point in favor of nonmoving party, while term "material" means that fact has potential to affect the outcome of the suit under governing law. [Vasapolli v. Rostoff, C.A.1 \(Mass.\) 1994, 39 F.3d 27. Summary Judgment](#) 🗝️ 46; [Summary Judgment](#) 🗝️ 47(1)

Factual dispute is material with respect to motion for summary judgment if it affects the outcome of the litigation, and genuine if manifested by substantial evidence going beyond the allegations of the complaint. [Pignons S.A. de Mecanique de Precision v. Polaroid Corp., C.A.1 \(Mass.\) 1981, 657 F.2d 482, 212 U.S.P.Q. 246. Summary Judgment](#) 🗝️ 47(1)

To preclude summary judgment, disputed facts must be material and must affect outcome of litigation. [Mobil Oil Corp. v. Federal Energy Admin., Em.App.1977, 566 F.2d 87. See, also, Standard Oil Co. v. Department of Energy, Em.App.1978, 596 F.2d 1029. Summary Judgment](#) 🗝️ 47(1)

"Material issue" whose existence will preclude the granting of summary judgment is one which may affect outcome of litigation. [Mutual Fund Investors, Inc. v. Putnam Management Co., Inc., C.A.9 \(Cal.\) 1977, 553 F.2d 620. Summary Judgment](#) 🗝️ 47(1)

A material issue of fact, for summary judgment purposes, is one which affects the outcome of the litigation. [Hahn v. Sargent, C.A.1 \(Mass.\) 1975, 523 F.2d 461, certiorari denied 96 S.Ct. 1495, 425 U.S. 904, 47 L.Ed.2d 754. See, also, Beltz Travel Service, Inc., v. International Air Transport Ass'n, C.A.9 \(Cal.\) 1980, 620 F.2d 1360. Summary Judgment](#) 🗝️ 47(1)

Fact in dispute is "material" for summary judgment purposes if it might affect outcome of suit under the governing law; dispute is "genuine" if the evidence is such that it might lead reasonable jury to return verdict for nonmoving party. [Newland v. Stevinson Toyota East, Inc., D.Colo.2007, 505 F.Supp.2d 689. Summary Judgment](#) 🗝️ 46; [Summary Judgment](#) 🗝️ 47(2)

Fact is "material" for summary judgment purposes if it might affect the outcome of a lawsuit under the governing law. [Rodriguez Velazquez v. Autoridad Metropolitana de Autobuses, D.Puerto Rico 2007, 502 F.Supp.2d 200. Summary Judgment](#) 🗝️ 47(2)

Fact is "material" for summary judgment purposes if, based on the substantive law at issue, it might affect the outcome of the case. [Santiago Rivera v. Johnson & Johnson, D.Puerto Rico 2006, 436 F.Supp.2d 316. Summary Judgment](#) 🗝️ 47(2)

Only facts that may affect the outcome of a case are "material" for summary judgment purposes. [Berrier v. Simplicity Corp., E.D.Pa.2005, 413 F.Supp.2d 431, question certified 2008 WL 538912, certified question denied 959 A.2d 900, 598 Pa. 594, opinion after certified question declined 563 F.3d 38, certiorari denied 130 S.Ct. 553, 558 U.S. 1011, 175 L.Ed.2d 383. Summary Judgment](#) 🗝️ 47(1)

In the context of a motion for summary judgment, a factual dispute is material only if it might affect the outcome of the suit under the governing law; a genuine factual dispute requires more than a mere scintilla of evidence. [Kephart v. Data Systems Intern., Inc., D.Kan.2003, 243 F.Supp.2d 1205. Summary Judgment](#) 🗝️ 47(2); [Summary Judgment](#) 🗝️ 89

In the summary judgment context, "material" means that a contested fact has the potential to change the outcome of the suit under the governing law if the dispute over it is resolved favorably to the nonmovant. [Carneal v. Leighton, D.Me.2002, 237 F.Supp.2d 104. Summary Judgment](#) 🗝️ 47(2)

Only disputes over facts that might affect the outcome of the suit under governing law will properly preclude entry of summary judgment. [Browning-Ferris Industries, Inc. v. U.S., D.Ariz.2002, 233 F.Supp.2d 1223. Summary Judgment](#) 🏹 47(2)

Factual disputes that cannot affect outcome of case should be disregarded by court in deciding whether summary judgment should issue. [Blankenship v. Warren County Sheriff's Dept., W.D.Va.1996, 939 F.Supp. 451. Summary Judgment](#) 🏹 43

In applying criteria for determining whether there is genuine issue of material fact so as to preclude entry of summary judgment, court is to consider that not every genuine factual conflict necessitates trial; it is only when disputed fact has potential to change outcome of suit under governing law, if found favorably to nonmovant, that materiality hurdle is cleared. [Shelley v. Trafalgar House Public Ltd. Co., D.Puerto Rico 1996, 918 F.Supp. 515, reconsideration denied 973 F.Supp. 84. Summary Judgment](#) 🏹 47(1)

Fact is "material," for purposes of summary judgment if its resolution in favor of one party might affect outcome of suit under governing law. [In re Browning-Ferris Industries Inc. Securities Litigation, S.D.Tex.1995, 876 F.Supp. 870. Summary Judgment](#) 🏹 47(1)

Evidence illuminating factual controversy must not be conjectural or problematic and must have substance in the sense that it limns differing versions of truth which a fact finder must resolve; material fact is one which affects the outcome of the case and must be resolved before consideration of related legal issues. [Erva Pharmaceuticals, Inc. v. American Cyanamid Co., D.Puerto Rico 1991, 755 F.Supp. 36, 19 U.S.P.Q.2d 1460. Summary Judgment](#) 🏹 46; [Summary Judgment](#) 🏹 47(1)

Issue of fact is "genuine" for purposes of precluding summary judgment if the evidence is significantly probative or more than merely colorable, such that jury could reasonably return a verdict for the nonmoving party, and issue of fact is "material" if proof thereof might affect the outcome of the lawsuit as assessed from the controlling substantive law. [Hermes v. Federal Crop Ins. Corp., D.Kan.1990, 729 F.Supp. 1292, affirmed 986 F.2d 1427. Summary Judgment](#) 🏹 46

--- Essential element of claim, material facts, questions of fact

Fact is "material" and precludes grant of summary judgment if proof of fact would have effect of establishing or refuting one of essential elements of cause of action or defense asserted by parties and would necessarily affect application of appropriate principles of law to rights and obligations of parties. [John Harris & Associates, Inc. v. Day, E.D.Mich.1996, 916 F.Supp. 651. Summary Judgment](#) 🏹 47(1)

Fact is "material fact" and precludes grant of summary judgment if proof of that fact would have the effect of establishing or refuting one of essential elements of cause of action or defense asserted by parties, and would necessarily affect the application of appropriate principles of law to rights and obligations of parties. [Franklin v. City of Pontiac, E.D.Mich.1995, 887 F.Supp. 978.](#)

"Material fact," for purposes of determining whether factual dispute precludes summary judgment, is one which establishes or refutes essential element of claim or defense and necessarily affects application of appropriate principles of law to rights and obligations of parties. [ParaData Computer Networks, Inc. v. Telebit Corp., E.D.Mich.1993, 830 F.Supp. 1001. Summary Judgment](#) 🏹 47(1)

If plaintiff cannot support each essential element of his claim, summary judgment must be granted because complete failure of proof regarding essential proof regarding essential elements renders all other facts immaterial. [Farley v. Wisconsin Evangelical Lutheran Synod, D.Minn.1993, 821 F.Supp. 1286. Summary Judgment](#) 🏹 51

Fact is "material," for purposes of motion for summary judgment, when it is identified by controlling substantive law as essential element of nonmoving party's case. [Marion v. DeKalb County, Ga., N.D.Ga.1993, 821 F.Supp. 685. Summary Judgment](#) 🏹 47(2)

Failure of proof concerning an essential element of party's claim or defense necessarily renders all other facts immaterial on that claim or defense, thus warranting summary judgment. [Gulf States Utilities Co. v. NEI Peebles Elec. Products, Inc., M.D.La.1993, 819 F.Supp. 538. Summary Judgment](#) 🏹 51

Fact is "material" and precludes grant of summary judgment if proof of that fact would have effect of establishing or refuting essential element of cause of action or defense asserted by parties and would necessarily affect application of appropriate principles of law to rights and obligations to parties. *Sheldon v. McGraw-Hill, Inc.*, E.D.Mich.1991, 777 F.Supp. 1369.

[Summary Judgment](#) 📌 47(1)

Fact is "material" and precludes grant of summary judgment if proof of that fact would have effect of establishing or refuting one of essential elements of cause of action or defense asserted by parties, and would necessarily affect application of appropriate principles of law to rights and obligations of parties. *Janda v. Riley-Meggs Industries, Inc.*, E.D.Mich.1991, 764 F.Supp. 1223. [Summary Judgment](#) 📌 47(1)

Facts are material for summary judgment purposes if they constitute legal defense, if their existence or nonexistence might affect result of action, or if resolution of issues they raise is so essential that party against whom issue was decided cannot prevail. *Buck v. U.S.*, S.D.Tex.1991, 756 F.Supp. 1014, appeal dismissed 967 F.2d 1060, rehearing denied 974 F.2d 1337, certiorari denied 113 S.Ct. 1052, 506 U.S. 1082, 122 L.Ed.2d 360. [Summary Judgment](#) 📌 47(1)

---- Issues properly raised, material facts, questions of fact

A fact is material within context of summary judgment if it tends to resolve issues that are properly raised by party. *Cordas v. Specialty Restaurants, Inc.*, D.C.Or.1979, 470 F.Supp. 780. [Summary Judgment](#) 📌 47(1)

---- Submissions or statements of material facts, material facts, questions of fact

Plaintiff's counterstatement of material facts, submitted as the party opposing a motion for summary judgment, did not comply with local rule governing statements of material facts on motion for summary judgment, so as to independently support granting summary judgment to defendants on premises liability claim under New York law; plaintiff's statement featured 113 numbered paragraphs and in no way indicated how those 113 paragraphs aligned with or departed from specific numbered paragraphs in defendants' submission of material facts, so that facts advanced in defendants' properly submitted statements could have been deemed admitted. *Looney v. Macy's Inc.*, E.D.N.Y.2021, 588 F.Supp.3d 328. [Summary Judgment](#) 📌 289

---- Conflicting statements, material facts, questions of fact

Even if officers' statements were in conflict as to armed suspect's physical motions immediately prior to being shot by officer, such conflict was minor discrepancy, and thus was not material, and did not preclude summary judgment in Fourth Amendment excessive force action by suspect's estate. *Estate of Larsen ex rel. Sturdivan v. Murr*, C.A.10 (Colo.) 2008, 511 F.3d 1255. [Civil Rights](#) 📌 1429; [Summary Judgment](#) 📌 115

There was irreconcilable conflict between former Navy machinist mate's interrogatory response and deposition testimony and, thus, under "sham affidavit" rule, portions of deposition testimony that contradicted interrogatory response would be disregarded, when deciding motion for summary judgment as to applicable limitations period for his maritime tort-based claims in action against global technology company, alleging his lung cancer was caused by asbestos-containing products manufactured by company he used while in the Navy; response stated mate learned about health hazards of inhaling asbestos when he was diagnosed with lung cancer in December 2016, whereas deposition testimony stated he learned asbestos exposure could cause lung cancer sometime after his diagnosis in 2017. *Israel v. John Crane, Inc.*, M.D.Fla.2022, 601 F.Supp.3d 1259. [Summary Judgment](#) 📌 326

In determining whether substantial issue of fact is presented as between parties to motion for summary judgment, there may be conflicting statements of fact which, while raising substantial issues under one legal theory, are immaterial under another. *Kanawha Valley Bank v. Nello L. Teer Co.*, S.D.W.Va.1955, 128 F.Supp. 325, affirmed 227 F.2d 306. [Summary Judgment](#) 📌 93

---- Defenses, material facts, questions of fact

In respect to the question of summary judgment a fact is material if it constitutes a legal defense to the action. *Kennett-Murray Corp. v. Bone*, C.A.5 (Ala.) 1980, 622 F.2d 887. [Summary Judgment](#) 📌 47(1)

If defendant moving for summary judgment demonstrates that no disputed material fact exists regarding the affirmative defense asserted, plaintiff must then demonstrate with specificity the existence of a disputed material fact; if plaintiff fails to make such a showing, the affirmative defense bars his claim, and defendant is then entitled to summary judgment as a matter of law. [Adams v. Boucard, W.D.Okla.2008, 591 F.Supp.2d 1191. Summary Judgment 26; Summary Judgment 45\(2\)](#)

Issue is "material," within meaning of this rule if there is no "genuine issue as to any material fact," if facts alleged are such as to constitute legal defenses, or are of a nature so as to affect result of action, or issue is so essential that party against whom it is resolved may not prevail. [Romero v. Union Pac. R. Co., D.C.Wyo.1978, 459 F.Supp. 741, vacated and remanded on other grounds 615 F.2d 1303. Summary Judgment 47\(1\)](#)

---- Relevant issues, material facts, questions of fact

Where issue of fact was not relevant to resolution of controlling legal issue, it was not "material" so as to preclude summary judgment. [U. S. v. Sumitomo Shoji, New York, Inc., Cust. & Pat.App.1976, 534 F.2d 320, 63 C.C.P.A. 79. Summary Judgment 47\(1\)](#)

The mere existence of some factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; factual disputes that are irrelevant or unnecessary will not be counted. [Lewis v. New Mexico Dept. of Health, D.N.M.2003, 275 F.Supp.2d 1319. Summary Judgment 47\(1\)](#)

Only disputes over facts that might affect outcome of suit under governing substantive law will preclude summary judgment; irrelevant or unnecessary factual disputes will not enter court's consideration. [Mazzarella v. U.S. Postal Service, D.Mass.1994, 849 F.Supp. 89. Summary Judgment 47\(1\)](#)

"Material facts," for purposes of summary judgment motion, are facts material to deciding case under relevant legal standard. [West v. Clinton, W.D.Ark.1992, 786 F.Supp. 803. Summary Judgment 47\(1\)](#)

Arguments, questions of fact

Affidavits made on personal knowledge and setting forth facts as would be admissible at trial are evidence that a court may consider when determining whether a material issue of fact exists precluding summary judgment; legal memoranda and oral argument are not evidence and do not create issues of fact. [Television Events & Marketing, Inc. v. AMCON Distributing, Co., D.Hawaii 2006, 484 F.Supp.2d 1124. Summary Judgment 95; Summary Judgment 304; Summary Judgment 313\(1\); Summary Judgment 315](#)

Plaintiff's bare arguments, unsworn and based on hearsay and speculation, did not satisfy requirement that she respond to defendant's summary judgment motion with evidence sufficient to establish jury issue. [Bolls v. Packard Elec., S.D.Miss.1995, 918 F.Supp. 173. Summary Judgment 95](#)

Assertions of parties, questions of fact

Police officer's assertion that opinions by autopsy doctor should not be considered by Court of Appeals, just as the district court did not consider them, was not the subject of an appealable order, and thus Court of Appeals lacked subject matter jurisdiction over assertion on interlocutory appeal of district court's order denying officer's motion for summary judgment that was based on qualified immunity in § 1983 Fourth Amendment excessive force action relating to deadly force used on fleeing suspect. [Williams v. City of Burlington, Iowa, C.A.8 \(Iowa\) 2022, 27 F.4th 1346. Federal Courts 3545\(2\)](#)

Discharged federal employee's conclusory allegations in his summary judgment responsive brief that disciplinary actions taken against him were "causally related" to arrival of female manager, that employee was harassed by manager, that decision to terminate him was made without just cause, and that Merit System Protection Board (MSPB) judge denied employee fair hearing did not create genuine issues of material fact sufficient to defeat summary judgment on employee's Title VII employment discrimination claims. [Monk v. Potter, E.D.Va.2010, 723 F.Supp.2d 860, affirmed 407 Fed.Appx. 675, 2011 WL 108325. Civil Rights 1555; Summary Judgment 117\(2\)](#)

Arrestee's mere allegations and speculation that city avoided claims of wrongful arrest for excessive use of force by offering deferred prosecution to criminal defendants in exchange for securing a release were insufficient to raise genuine issue of material fact regarding

whether city had custom or policy of turning a blind eye to, or condoning, violations of citizens' constitutional rights as would give rise to city's municipal liability on arrestee's § 1983 claims alleging that police officers used excessive force and failed to provide medical treatment. [Peschel v. City of Missoula](#), D.Mont.2009, 686 F.Supp.2d 1107. [Summary Judgment](#) 🏠 115

Plaintiff's frequent denials of knowledge or information sufficient to form a belief as to the truth or falsity of defendants' statements of fact were insufficient to create an issue of fact for summary judgment purposes in tort action. [Alfano v. NGHT, Inc.](#), E.D.N.Y.2009, 623 F.Supp.2d 355. [Summary Judgment](#) 🏠 241

Conclusory assertions cannot serve to create a genuine issue of fact to survive summary judgment. [Newland v. Stevinson Toyota East, Inc.](#), D.Colo.2007, 505 F.Supp.2d 689. [Summary Judgment](#) 🏠 95

Mere disagreement or bald assertion that a genuine issue of material fact exists no longer precludes the use of summary judgment. [Huntsinger v. Shaw Group, Inc.](#), D.Or.2006, 410 F.Supp.2d 968, affirmed 268 Fed.Appx. 518, 2008 WL 510534. [Summary Judgment](#) 🏠 45(1)

Pure speculation and unsupported assertions will not suffice to create genuine issue of material fact for summary judgment purposes. [Blankenship v. Warren County Sheriff's Dept.](#), W.D.Va.1996, 939 F.Supp. 451. [Summary Judgment](#) 🏠 95

Unsubstantiated allegations carry no probative weight in summary judgment proceedings. [Boyer v. Board of County Com'rs of County of Johnson County](#), D.Kan.1996, 922 F.Supp. 476, affirmed 108 F.3d 1388. [Summary Judgment](#) 🏠 95

Mere conclusory allegations or denials in legal memoranda or oral argument are not evidence and cannot by themselves create genuine issue of material fact when none would otherwise exist for purposes of summary judgment motion. [Goldwasser v. Smith Corona Corp.](#), D.Conn.1993, 817 F.Supp. 263, affirmed 26 F.3d 137. [Summary Judgment](#) 🏠 95

On motion for summary judgment, court may discover questions of material fact, even though both parties, in support of cross motions for summary judgment, have asserted that no such questions exist. [Wright v. Credit Bureau of Georgia, Inc.](#), N.D.Ga.1982, 548 F.Supp. 591, on reconsideration 555 F.Supp. 1005. [Summary Judgment](#) 🏠 279

Circumstantial evidence, questions of fact

Circumstantial evidence may create questions of fact that preclude the entry of summary judgment. [Lublin Corp. v. U.S.](#), Fed.Cl.2011, 98 Fed.Cl. 53. [United States](#) 🏠 1061(3)

Credibility, questions of fact

Broad, conclusory attacks on credibility of witness will not, by themselves, present questions of material fact sufficient to avoid summary judgment. [Island Software and Computer Service, Inc. v. Microsoft Corp.](#), C.A.2 (N.Y.) 2005, 413 F.3d 257, 75 U.S.P.Q.2d 1290, on remand 2006 WL 1025915. [Summary Judgment](#) 🏠 96

Credibility determinations, not suitable for summary judgment, had to be made to determine if supervisor actually made statements that Asian, male, 61-year-old employee accused him of making and whether articulated reasons for employee's discharge were legitimate or mere pretext for supervisor's discriminatory attitude, on claim under New York State Human Rights Law alleging employment discrimination on basis of age, race, and national origin. [Bang v. IBM Corp.](#), E.D.N.Y.2009, 600 F.Supp.2d 430. [Summary Judgment](#) 🏠 96

Credibility issues fall outside the scope of summary judgment. [Ruiz Rivera v. Pfizer Pharmaceutical LLC](#), D.Puerto Rico 2006, 463 F.Supp.2d 163, on reconsideration in part 2007 WL 5031105, affirmed 521 F.3d 76, certiorari denied 129 S.Ct. 180, 555 U.S. 939, 172 L.Ed.2d 241. [Summary Judgment](#) 🏠 96

Attack on credibility of third party affiant as being biased, in response to affiant's categorical denial that defamatory communication was ever made to her, was insufficient by itself to raise issue of fact on issue of communication, so as to defeat defendant's motion for summary judgment on libel claim. [Holt v. Camus](#), D.Md.2000, 128 F.Supp.2d 819, affirmed 217 F.3d 839. [Summary Judgment](#) 🏠 247

If factual context makes claim of party opposing motion for summary judgment implausible, that party must come forward with more persuasive evidence than would otherwise be necessary to establish genuine issue for trial. [In re Hawaii Federal Asbestos Cases, D.Hawaii 1994, 854 F.Supp. 702. Summary Judgment 52; Summary Judgment 80](#)

If factual context on summary judgment motion makes nonmoving party's claim implausible, that party must come forward with more persuasive evidence than would otherwise be necessary to show that there is genuine issue of material fact. [Calhoun v. Liberty Northwest Ins. Corp., W.D.Wash.1992, 789 F.Supp. 1540. Summary Judgment 80](#)

Formal issues, questions of fact

Issues of fact precluding entry of summary judgment must be material and substantial rather than merely formal. [District of Columbia Redevelopment Land Agency v. 40 Parcels of Land in Squares 325, 326, 351 and 352 in District of Columbia, D.C.D.C.1959, 171 F.Supp. 138. Summary Judgment 46](#)

Where party seeking summary judgment makes a convincing showing that genuine issues of fact are lacking, opposing party must adequately demonstrate by receivable facts that a real, and not merely formal, controversy exists. [U.S. v. Jones, M.D.Ga.1957, 155 F.Supp. 52. Summary Judgment 77](#)

Inconsistent statements, questions of fact

Postal Service's inconsistent positions, in form of initial answer conceding that employee met 1,250-hour requirement for FMLA eligibility, followed by amended answer denying eligibility and submission of employee's payroll records documenting that her hours fell short of requirement, did not create fact issue, so as to preclude summary judgment, where work hours reflected in employee's payroll records were uncontradicted. [Pirant v. U.S. Postal Service, C.A.7 \(Ill.\) 2008, 542 F.3d 202, modified on denial of rehearing, certiorari denied 130 S.Ct. 361, 558 U.S. 815, 175 L.Ed.2d 21. Federal Civil Procedure 852](#)

Even if not collaterally estopped under Connecticut law from denying facts underlying his plea of guilty to Connecticut offense of interfering with officer, civil rights litigant could not as a matter of federal evidentiary law create a disputed issue of fact, in order to avoid summary judgment in suit against officer for use of excessive force, through self-serving assertions that contradicted the factual basis or elements of his plea. [Sanabria v. Martins, D.Conn.2008, 568 F.Supp.2d 220. Summary Judgment 115](#)

Interpretations, questions of fact

That a statement admits of more than one interpretation in itself suggests that there is a genuine issue of material fact as to its meaning, for summary judgment purposes. [Lucas v. Paige, D.D.C.2006, 435 F.Supp.2d 165. Summary Judgment 46](#)

Legal opinions, questions of fact

Fact that defendants vigorously disputed legal conclusions to be drawn from the fact presented was no bar to grant of summary judgment. [Sagers v. Yellow Freight System, Inc., C.A.5 \(Ga.\) 1976, 529 F.2d 721, rehearing denied 542 F.2d 1173, rehearing denied 542 F.2d 1174. Summary Judgment 13](#)

Conflicts concerning ultimate and decisive conclusion to be drawn from undisputed facts do not prevent the rendition of a summary judgment when that conclusion is one to be drawn by the court. [Fox v. Johnson & Wimsatt, App.D.C.1942, 127 F.2d 729, 75 U.S.App.D.C. 211. Summary Judgment 48](#)

It is insufficient for opponents of summary judgment to argue in abstract that legal theory involved in case encompasses some factual questions. [Johnson v. Southwestern Bell Telephone Co., E.D.Tex.1993, 819 F.Supp. 578, affirmed 22 F.3d 1094. Summary Judgment 77](#)

Motive, questions of fact

Summary judgment is precluded on public employee's First Amendment retaliation claim where questions regarding employer's motive predominate in inquiry regarding how important a role the protected speech played in adverse employment decision. [Frisenda v. Incorporated Village of Malverne, E.D.N.Y.2011, 775 F.Supp.2d 486. Civil Rights 1430; Summary Judgment 184](#)

Summary judgment is generally inappropriate where questions of the defendant's state of mind are at issue and should thus be granted with caution in employment discrimination cases, but summary judgment remains available to reject discrimination claims in cases lacking genuine issues of material fact. [Ragusa v. Malverne Union Free School Dist.](#), E.D.N.Y.2008, 582 F.Supp.2d 326, adhered to on reconsideration 652 F.Supp.2d 275, affirmed in part, vacated in part and remanded 381 Fed.Appx. 85, 2010 WL 2490966. [Summary Judgment](#) 🏠 17; [Summary Judgment](#) 🏠 117(1)

Motive or absence of motive of party to engage in conduct alleged by another party is relevant to determining whether genuine issue of material fact exists for summary judgment purposes. [Berda v. CBS Inc.](#), W.D.Pa.1992, 800 F.Supp. 1272, affirmed 975 F.2d 1548. [Summary Judgment](#) 🏠 43

Moving party's claims, questions of fact

Summary judgment was properly granted defendant in action for damages for breach of contract even though facts were disputed where the facts were considered as claimed by the plaintiff. [Computer Servicenters, Inc., of Greenville v. Beacon Mfg. Co.](#), C.A.4 (S.C.) 1971, 443 F.2d 906. [Summary Judgment](#) 🏠 123

Number of issues, questions of fact

On summary judgment, factual disputes that are irrelevant or unnecessary will not be counted. [Kilbane v. Ford Motor Co.](#), N.D.Ohio 1990, 775 F.Supp. 1042, affirmed 935 F.2d 270. [Summary Judgment](#) 🏠 47(1)

Existence of one genuine issue of material fact is sufficient to preclude summary judgment. [No Oilport! v. Carter](#), W.D.Wash.1981, 520 F.Supp. 334. [Summary Judgment](#) 🏠 45(1)

Opposition to motion, questions of fact

On motion for summary judgment, nonmovant must present more than scintilla of evidence and must set forth specific facts showing that there is genuine issue for trial. [Davis v. Fleming Companies, Inc.](#), C.A.8 (Mo.) 1995, 55 F.3d 1369. [Summary Judgment](#) 🏠 77; [Summary Judgment](#) 🏠 89

A party moving for relief under the rule providing that when a nonmovant to a motion for summary judgment shows by affidavit or declaration that it cannot present facts essential to justify its opposition, the court may defer considering the motion or deny it, allow time to obtain affidavits or declarations or to take discovery, or issue any other appropriate order, must act diligently and proffer to the trial court an affidavit or other authoritative submission that (1) explains his or her current inability to adduce the facts essential to filing an opposition, (2) provides a plausible basis for believing that the sought-after facts can be assembled within a reasonable time, and (3) indicates how those facts would influence the outcome of the pending summary judgment motion. [Sacco v. American Institutional Medical Group](#), D.N.H.2022, 609 F.Supp.3d 22. [Summary Judgment](#) 🏠 313(1); [Summary Judgment](#) 🏠 344

Participant abandoned her ERISA claim against plan administrator to extent it relied on allegations that short term disability (STD) was not sufficient, where participant did not respond to that aspect of participant's argument in her opposition to participant's motion for summary judgment. [D'Iorio v. Winebow, Inc.](#), E.D.N.Y.2014, 68 F.Supp.3d 334. [Summary Judgment](#) 🏠 286

Once the party moving for summary judgment has met its burden of identifying evidence demonstrating absence of genuine issue of material fact, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. [Crockett v. District of Columbia Metropolitan Police Dept.](#), D.D.C.2003, 293 F.Supp.2d 63. [Summary Judgment](#) 🏠 77; [Summary Judgment](#) 🏠 95

Bare bones allegations are insufficient to withstand summary judgment, because opposing party must counter moving party's factual allegations with specific, factual disputes; mere general allegations are not a sufficient response. [Williams v. CSX Transp., Inc.](#), S.D.Miss.1996, 925 F.Supp. 447, affirmed 139 F.3d 899. [Summary Judgment](#) 🏠 95

In attempting to establish existence of factual dispute precluding summary judgment, opposing party may not rely upon denial of pleadings, but is required to tender evidence of

specific facts in form of affidavits, and admissible discovery material in support of its contention that dispute exists. [Clark v. County of Placer, E.D.Cal.1996, 923 F.Supp. 1278. Summary Judgment 77](#); [Summary Judgment 93](#); [Summary Judgment 310](#); [Summary Judgment 325](#)

Party opposing motion for summary judgment must do more than present evidence that is merely colorable, conclusory, or speculative and must present concrete evidence from which reasonable juror could return verdict in nonmovant's favor; nonmovant must do more than show some metaphysical doubt as to material facts. [J.G.B. Enterprises, Inc. v. U.S., N.D.N.Y.1996, 921 F.Supp. 91. Summary Judgment 95](#)

There is no "genuine issue of fact" sufficient to preclude entry of summary judgment, where nonmoving party fails to offer evidence sufficient to establish existence of element essential to his or her case. [Shaw v. Santa Monica Bank, D.Hawaii'i 1996, 920 F.Supp. 1080. Summary Judgment 51](#)

When party is given clear answers to unambiguous questions which negate existence of any genuine issue of material fact, that party cannot thereafter create such issue with affidavit that merely contradicts, without explanation, previously given clear testimony. [Hall v. Burger King Corp., S.D.Fla.1995, 912 F.Supp. 1509. Summary Judgment 329](#)

Duty of nonmoving party to respond to movant's showing of absence of material factual issues with any factual assertion that would preclude summary judgment is not especially heavy; however, he must show specific facts that present genuine issue of material worthy of trial, rather than showing mere general allegations. [Lee v. U.S., W.D.Tex.1994, 870 F.Supp. 137. Summary Judgment 77](#); [Summary Judgment 95](#)

Nonmovant for summary judgment must produce specific facts showing genuine issue for trial, not general allegations, and nonmovant has failed to meet this standard if its response merely shows that there is some metaphysical doubt as to the material facts; if no such evidence is produced, movant is entitled to judgment as a matter of law. [Marshall v. Housing Authority of City of Taylor, W.D.Tex.1994, 866 F.Supp. 999, affirmed 51 F.3d 1045. Summary Judgment 54](#); [Summary Judgment 64](#); [Summary Judgment 77](#)

To defeat summary judgment, nonmoving party must go beyond pleadings and designate specific facts showing that there is genuine issue for trial. [Grant v. City of New York, S.D.N.Y.1994, 848 F.Supp. 1131. Summary Judgment 77](#)

In resisting motion for summary judgment, party may not rest upon mere allegations or denials of adverse party's pleading but must set forth specific facts showing that there is genuine issue for trial. [Iowa Mold Tooling Co., Inc. v. Teamsters Local Union No. 828, Intern. Broth. of Teamsters, Chauffeurs, Warehousemen and Helpers, AFL-CIO, S.D.Iowa 1993, 847 F.Supp. 125, affirmed 16 F.3d 311. Summary Judgment 77](#)

Party opposing properly supported summary judgment motion may not rest upon mere allegations of complaint, but must set forth evidence of specific facts showing that there is genuine issue for trial. [Galusha v. Farmers Ins. Exchange, D.Colo.1994, 844 F.Supp. 1401. Summary Judgment 77](#); [Summary Judgment 95](#)

Personal knowledge, questions of fact

State prisoner's affidavit in opposition to prison officials' summary judgment motion in § 1983 action alleging Eighth Amendment violation based on deliberate indifference to substantial risk of serious harm, stating "[t]o the best of [prisoner's] belief and knowledge" the number of inmate-on-inmate assaults that had occurred in back hallway in which another inmate assaulted the prisoner with a box cutter, did not satisfy personal knowledge requirement for summary judgment affidavits. [Harrison v. Culliver, C.A.11 \(Ala.\) 2014, 746 F.3d 1288. Summary Judgment 315](#)

Father lacked personal knowledge to testify that Department of Children and Families (DCF) workers participated in multidisciplinary meetings with father's brother, and had then shared that information with detective, who searched father's residence without warrant in connection with child abuse investigation, purportedly with permission of brother, who lived in residence, and thus father's testimony was inadmissible, for summary judgment purposes, in § 1983 unlawful search action. [Shakir v. Derby Police Department, D.Conn.2018, 284 F.Supp.3d 165, reversed and remanded 805 Fed.Appx. 35, 2020 WL 1480141, motion to amend denied 2021 WL 11958325. Summary Judgment 315](#)

Declaration by biologist employed by state of Georgia in summary judgment affidavit, that "most" logs submerged in rivers were "embedded," was conclusory and not based on personal knowledge of logs at issue in company's in rem action against certain logs submerged in rivers within Georgia, and thus court would not consider affidavit at summary judgment stage in determining whether embeddedness precluded application of common law of finds. [Aqua Log, Inc. v. Lost and Abandoned Pre-Cut Logs and Rafts of Logs, M.D.Ga.2015, 101 F.Supp.3d 1345. Summary Judgment](#) 🏠 315

Employer's statement, made by affidavit of head of its human resources department, that employee had received a copy of its employee handbook, lacked sufficient support, and thus would not be considered on motion for summary judgment in wrongful termination suit; affiant failed to provide any context surrounding distribution of the handbooks, including date or location, and she lacked personal knowledge of whether employee received the material, given that she worked more than a thousand miles away from where employee worked and had never traveled there. [Anderson v. Bristol, Inc., S.D.Iowa 2013, 936 F.Supp.2d 1039. Summary Judgment](#) 🏠 315

Affidavit submitted by warehousing company in opposition to food wholesaler's motion for summary judgment, in wholesaler's breach of contract action, satisfied personal knowledge requirement and, thus, could create a genuine issue of material fact; affidavit stated that it was based on affiant's own personal knowledge, and letters attached to wholesaler's statement of material fact demonstrated affiant's personal involvement in the investigation and government embargo that gave rise to the action. [Tate & Lyle Ingredients Americas, Inc. v. Transport Distribution, LLC, D.Me.2010, 746 F.Supp.2d 189. Summary Judgment](#) 🏠 315

Affidavit of person with experience in block industry, stating that licensor held "dominant position in the manufacture of concrete blocks" and if defendant manufacturer had not manufactured blocks in violation of agreement "it would have dramatically hindered [other supplier's] ability to satisfy market demand," was not sufficient to create issue of fact on summary judgment in action alleging breach of Wisconsin licensing agreement as to whether licensor had been damaged, since affiant did not offer any reason to believe he had knowledge concerning other suppliers and other evidence indicated that demand could have been met by other suppliers. [Allan Block Corp. v. County Materials Corp., W.D.Wis.2008, 588 F.Supp.2d 976, motion to amend denied 2009 WL 10681203. Summary Judgment](#) 🏠 320

In the face of unequivocal testimony on a subject, the testimony of a party disclaiming knowledge about that subject cannot create a genuine issue of fact at the summary judgment stage. [McGee v. Wisconsin Bell, Inc., W.D.Wis.2004, 349 F.Supp.2d 1146, affirmed 198 Fed.Appx. 531, 2006 WL 2457464. Summary Judgment](#) 🏠 80

"Factually unsupported" claims or defenses, which summary judgment serves to isolate and dispose of, cannot include those for which factual support may exist, but is unavailable to non-moving party simply because movant is only one with personal knowledge of facts. [Davis v. City of New York, S.D.N.Y.2001, 142 F.Supp.2d 461. Summary Judgment](#) 🏠 43

Summary judgment is inappropriate where disputed fact is peculiarly within knowledge of one party. [Rolnick v. El Al Israel Airlines, Ltd., E.D.N.Y.1982, 551 F.Supp. 261. Summary Judgment](#) 🏠 13

Sham issues, questions of fact

District court was entitled on manufacturer's motion for summary judgment on claim under Florida law alleging breach of duty to warn of drug's dangerous side effects to disregard inescapably and unequivocally contradictory new testimony of physician, as expert witness, relating to his knowledge of patient taking drug, based on "sham issue of fact" doctrine, which prohibited party from defeating summary judgment simply by submitting affidavit that contradicted party's previous sworn testimony, where contradictions were central to claim, they arose after manufacturer had filed its motion for summary judgment, and they were left unexplained. [In re Fosamax Products Liability Litigation, C.A.2 \(N.Y.\) 2013, 707 F.3d 189, for additional opinion, see 509 Fed.Appx. 69, 2013 WL 335987, certiorari denied 133 S.Ct. 2783, 569 U.S. 1026, 186 L.Ed.2d 234. Summary Judgment](#) 🏠 329

Summary judgment is called for where it clearly appears that issues are not genuine, but feigned. [United Nat. Ins. Co. v. Tunnel, Inc., C.A.2 \(N.Y.\) 1993, 988 F.2d 351. Summary](#)

[Judgment](#) 46

Declaration presented to show existence of conversation that agricultural products limited liability company (LLC) alleged occurred between it and specialty chemical company that manufactured agricultural products for LLC, in which LLC allegedly informed company that it was seeking to register trademarks for "Enzyme Max" and "E Max" and that company agreed that it would cease using company's own "E-Max" product name, was not an attempt to create sham fact issue, due to purported conflict with LLC's deposition testimony, at stage of company's motion for summary judgment; declaration and deposition were not in direct conflict, as declaration referenced discussion allegedly occurring before trademark application, while deposition concerned whether LLC informed company after application.

[EST Inc. v. Royal-Grow Prods., LLC, D.Kan.2021, 526 F.Supp.3d 943. Summary Judgment](#) 329

Sexual harassment plaintiff's affidavit in opposition to defendant's motion for summary judgment, which alleged incidents not mentioned in prior deposition, would be stricken as attempt to create sham issues of fact; all newly alleged incidents occurred prior to deposition and were within scope of questions asked at deposition. [Cubie v. Bryan Career College, Inc., D.Kan.2003, 244 F.Supp.2d 1191](#), motion to amend denied 2003 WL 2006810. [Summary Judgment](#) 329

Factors relevant to the existence of a sham fact issue on motion for summary judgment include whether the affiant was cross-examined during his earlier testimony, whether the affiant had access to the pertinent evidence at the time of his earlier testimony or whether the affidavit was based on newly discovered evidence, and whether the earlier testimony reflects confusion which the affidavit attempts to explain. [Hill v. McHenry, D.Kan.2002, 211 F.Supp.2d 1267. Summary Judgment](#) 329

Order specifying nondisputed facts, questions of fact

Even where a pretrial order specifies that certain issues should be tried, trial judge may subsequently grant a motion for summary judgment on ground that those issues are not really in dispute. [S.E.C. v. Murphy, C.A.9 \(Cal.\) 1980, 626 F.2d 633. Summary Judgment](#) 351

Summary judgment could not be prevented by claimed existence of genuine issue of material fact not preserved by pretrial order which listed remaining issues of fact to be tried, in absence of any modification or request for modification of order. [L & E Co. v. U. S. A. ex rel. Kaiser Gypsum Co., C.A.9 \(Cal.\) 1965, 351 F.2d 880. Summary Judgment](#) 271

Purpose of an order directing the court to specify the material facts which have been established beyond dispute and those that remain in dispute, thereby precluding summary judgment, is to salvage all constructive results of summary judgment proceedings. [In re Data General Corp. Antitrust Litigation, N.D.Cal.1980, 490 F.Supp. 1089, 207 U.S.P.Q. 549. Summary Judgment](#) 355

This rule permits court to withdraw some of the factual issues from the case when they are not material to the claim and an order issued pursuant to this rule results in narrowing the scope of the trial. [Marietta v. Cities Service Oil Co., D.C.N.J.1976, 414 F.Supp. 1029. Summary Judgment](#) 63

On motion for summary judgment, court may ascertain what material facts exist without controversy and what facts are actually and in good faith controverted and make an order specifying the facts without substantial controversy. [Citizens Environmental Council v. Volpe, D.C.Kan.1973, 364 F.Supp. 286](#), affirmed 484 F.2d 870, certiorari denied 94 S.Ct. 1935, 416 U.S. 936, 40 L.Ed.2d 286. [Summary Judgment](#) 351; [Summary Judgment](#) 355

[Rule 56\(d\) \[Fed.Civ.Proc.Rule 56\(d\), 28 U.S.C.A.\]](#), which provides for "order" specifying undisputed facts after denial of judgment, does not allow party to bring motion for mere factual adjudication; rather it allows court, on proper motion for summary judgment, to frame and narrow triable issues if court finds that such order would be helpful to progress of litigation. [Capitol Records, Inc. v. Progress Record Distributing, Inc., N.D.Ill.1985, 106 F.R.D. 25. Summary Judgment](#) 356

Time of determination, questions of fact

Presence or absence of genuine issues of material fact, for purposes of judging correctness of trial court's action on motion for summary judgment, is to be gauged as of time judgment was entered by district court. [Sound Ship Bldg. Corp. v. Bethlehem Steel Co. \(Inc.\), C.A.3 \(N.J.\) 1976, 533 F.2d 96](#), certiorari denied 97 S.Ct. 161, 429 U.S. 860, 50 L.Ed.2d 137. [Summary Judgment](#) 43

PARTIAL SUMMARY JUDGMENT

Partial summary judgment generally

Plaintiffs who limited claim on their motion for a partial summary judgment would not be bound to limited claim at trial but could try cases on original complaints. [Waldie v. Schlesinger, C.A.D.C.1974, 509 F.2d 508, 166 U.S.App.D.C. 175](#). [Summary Judgment](#) 63

As with a motion for summary judgment, partial summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. [E.piphany, Inc. v. St. Paul Fire & Marine Ins. Co., N.D.Cal.2008, 590 F.Supp.2d 1244](#), leave to file for reconsideration denied 686 F.Supp.2d 1005. [Summary Judgment](#) 63; [Summary Judgment](#) 301

The "all or any part" language in rule providing that a "party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof" authorizes the granting of summary judgment with respect to all claims in an action or only some claims in a multiple claim action. [Evergreen Intern., S.A. v. Marinex Const. Co., Inc., D.S.C.2007, 477 F.Supp.2d 697](#). [Summary Judgment](#) 63

Motion for partial summary judgment utilizes same standards required for consideration of full motion for summary judgment: court may grant summary judgment on issue only when pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that moving party is entitled to judgment as a matter of law. [Pettengill v. U.S., E.D.Va.1994, 867 F.Supp. 380](#). [Summary Judgment](#) 63

Standard for grant of partial summary judgment can be met by moving party, in case in which ultimate burden of persuasion at trial rests on nonmoving party, either by submitting affirmative evidence negating essential element of nonmovant's claim, or by demonstrating that nonmoving party's evidence itself is insufficient to establish an essential element of his or her claim. [Campbell v. Robert Bosch Power Tool Corp., M.D.Ala.1992, 795 F.Supp. 1093](#). [Summary Judgment](#) 63

Party defendant could not maintain motion for partial summary judgment as to claims which were not asserted against him. [American Re-Insurance Co. v. Insurance Commission of State of Cal., C.D.Cal.1981, 527 F.Supp. 444](#). [Summary Judgment](#) 63

Motion for partial summary judgment can be granted only if reviewing court is satisfied that a properly instructed jury, giving full weight to plaintiff's evidence, trying every reasonable inference in its favor, and subjecting defendant's evidence to a critical mind, could not rationally have found that plaintiff was entitled to any relief. [Hawes Office Systems, Inc. v. Wang Laboratories, Inc., E.D.N.Y.1981, 524 F.Supp. 610](#). [Summary Judgment](#) 50

A party may not file a motion for partial summary judgment on a fact or an element of a claim. [Franklin-Mason v. Penn, D.D.C.2009, 259 F.R.D. 9](#). [Summary Judgment](#) 63

Partial summary judgment is properly withheld where, on basis of cold record, a considerable expenditure of judicial time and effort will be required to sift out and piece together undisputed facts essential to summary judgment. [Toyoshima Corp. of California v. General Footwear, Inc., S.D.N.Y.1980, 88 F.R.D. 559](#). [Summary Judgment](#) 63

Partial summary judgment is available where it disposes of at least one count of complaint in its entirety. [In re Randy, Bkrcty.N.D.Ill.1995, 189 B.R. 425](#). [Bankruptcy](#) 2164.1; [Summary Judgment](#) 63

Partial summary judgment is available only to dispose of one or more counts of complaint in their entirety. [In re Grabill Corp., Bkrcty.N.D.Ill.1991, 135 B.R. 101](#). [Summary Judgment](#) 63

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Nonfavorable view of motion, partial summary judgment

Motions for partial summary judgment are generally disfavored by court because they lead to orders which are final, but which are unappealable until entire matter has been adjudicated; however, such motions are permitted but they must be conducive to conservation of judicial resources and of benefit to parties. [Bruschini v. Board of Educ. of Arlington Cent. School Dist.](#), S.D.N.Y.1995, 911 F.Supp. 104. [Summary Judgment](#) 63

Applications for partial summary judgment as to uncontested fact issues are not favored. [Burgans v. New York Cent. R. Co.](#), S.D.N.Y.1961, 192 F.Supp. 222. [Summary Judgment](#) 63

Discovery, partial summary judgment

In five consolidated personal injury actions against railroad, resulting from an accident at a tunnel project, project manager failed to show that need for discovery precluded grant of partial summary judgment for railroad on its contractual indemnification claims against project manager, where issues for which discovery was sought were not relevant to resolution of railroad's motion. [Cevasco v. National R.R. Passenger Corp.](#), S.D.N.Y.2009, 606 F.Supp.2d 401. [Summary Judgment](#) 63; [Summary Judgment](#) 344

Discretion of court, partial summary judgment**Duty of court, partial summary judgment**

These rules do not provide for partial summary judgment for a portion of a single claim; nonetheless, applicable rule imposes a duty on a court that does not fully adjudicate a case on a motion for summary judgment to make an order formulating issues for trial, to extent practicable. [Connelly v. Wolf, Block, Schorr and Solis-Cohen](#), E.D.Pa.1978, 463 F.Supp. 914. [Summary Judgment](#) 63

Portion of claim, partial summary judgment

Even if plaintiff was correct in contention that there were no material disputed issues of fact as to some issues, trial court did not err in denying plaintiff's motion for partial summary judgment inasmuch as court, in its discretion in shaping case for trial, may deny summary judgment as to portions of the case that are ripe therefor in order to achieve a more orderly or expeditious handling of the entire litigation. [Powell v. Radkins](#), C.A.5 (Fla.) 1975, 506 F.2d 763, rehearing denied 509 F.2d 576, certiorari denied 96 S.Ct. 140, 423 U.S. 873, 46 L.Ed.2d 104. [Summary Judgment](#) 63

Subd. (d) of this rule, relating to summary judgment in case not fully adjudicated on motion, does not contemplate a summary judgment for any portion of a claim less than the whole. [Biggins v. Oltmer Iron Works](#), C.C.A.7 (Ill.) 1946, 154 F.2d 214. See, also, [Coffman v. Federal Laboratories](#), C.A.Pa.1948, 171 F.2d 94; [Lee v. Southern Bell Tel. & Tel. Co.](#), D.C.S.C.1967, 294 F.Supp. 1147; [Metal Coating Corp. v. Baker Mfg. Co.](#), D.C.Wis.1964, 227 F.Supp. 529; [Daniels v. Beryllium Corp.](#), D.C.Pa.1962, 211 F.Supp. 452; [New Hampshire Fire Ins. Co. v. Perkins](#), D.C.Del.1962, 30 F.R.D. 382; [Michel v. Meier](#), D.C.Pa.1948, 8 F.R.D. 464. [Federal Civil Procedure](#) 2573

Motion for partial summary judgment upon one issue in one claim was not procedurally deficient since motion for summary judgment may be brought on claim or any part thereof. [France Stone Co., Inc. v. Charter Tp. of Monroe](#), E.D.Mich.1992, 790 F.Supp. 707. [Summary Judgment](#) 63; [Summary Judgment](#) 277(1)

Summary judgment could be awarded on a portion of a single claim. [Blackford v. Action Products Co., Inc.](#), W.D.Mo.1981, 92 F.R.D. 79. [Summary Judgment](#) 63

Multiple motions, partial summary judgment

District court's earlier denial of investment advisor's motion for partial summary judgment on issue of whether either judgment creditor of two of investment advisor's customers or judgment creditor's purported agent also was customer did not preclude summary judgment for investment advisor on subsequently filed motion, particularly when first motion was simply found to be premature, whereas second motion was filed after expiration of original discovery cutoff date, and when customer issue was not basis for grant of summary judgment. [Compania de Elaborados de Cafe v. Cardinal Capital Management, Inc.](#), S.D.Fla.2003, 401 F.Supp.2d 1270. [Summary Judgment](#) 365

Separate claims, partial summary judgment

Where complaint stated one single count claim for damages, partial summary judgment was not available on various aspects of that single claim. [Oberweis Dairy, Inc. v. Associated Milk Producers, Inc.](#), N.D.Ill.1982, 553 F.Supp. 962. [Summary Judgment](#) 63

Neither employer's request for a judgment on only part of an indivisible claim, nor its request that seven of the eight alleged acts of retaliation in the Title VII case not be permitted to be pursued at trial, was proper in a motion for partial summary judgment. [Franklin-Mason v. Penn.](#), D.D.C.2009, 259 F.R.D. 9. [Summary Judgment](#) 63

Summary judgment may be granted in a situation where a "separate claim" is presented, a "separate claim" being defined as that which is entirely distinct from other claims involved in an action which arises from a different occurrence or transaction which form the basis of separate units of judicial action. [Triangle Ink & Color Co., Inc. v. Sherwin-Williams Co.](#), N.D.Ill.1974, 64 F.R.D. 536, 185 U.S.P.Q. 142. [Summary Judgment](#) 63

Partial summary judgment is generally reserved for cases where there are distinct and separate claims and not where there is but a single claim. [Mills v. Larson](#), W.D.Pa.1972, 56 F.R.D. 63. [Summary Judgment](#) 63

Counterclaims, partial summary judgment

Trial court could ascertain in partial summary judgment procedure amount of damages on counterclaim brought by appliance manufacturer against distributor, in suit alleging breach of distributorship agreement, even though distributor claimed that its damages would exceed amount of counterclaim, but entry of judgment would be stayed until entire proceeding was concluded. [Jones Distributing Co., Inc. v. White Consol. Industries, Inc.](#), N.D.Iowa 1996, 943 F.Supp. 1445. [Summary Judgment](#) 63

When a counterclaim is inextricably interwoven with the underlying cause of action, summary judgment cannot be granted on the counterclaim. [RPJ Sportswear, Inc. v. Xylo Tex, Ltd.](#), S.D.N.Y.1988, 681 F.Supp. 225. [Summary Judgment](#) 62

Where by plaintiff's failure to make timely response to counterclaimant's request for admission plaintiff admitted truth of matters contained therein, there was no genuine issue as to any material fact with respect to allegations contained in counterclaim, and hence counterclaimant was entitled to partial summary judgment as to plaintiff's proportionate share of expense incurred by counterclaimant in controlling the "blowout" of joint venture in oil and gas well. [Weva Oil Corp. v. Belco Petroleum Corp.](#), N.D.W.Va.1975, 68 F.R.D. 663. [Summary Judgment](#) 63

Where genuine unresolved factual issues as to defendants' counterclaims were separable from plaintiff's claim, such unresolved issues would not preclude granting partial summary judgment on plaintiff's claims. [Curtis Pub. Co. v. Church, Rickards & Co., Inc.](#), E.D.Pa.1973, 58 F.R.D. 594. [Summary Judgment](#) 63

Persons bound, partial summary judgment

Partial summary judgment dismissing codefendant from negligence and strict liability suit merely established that plaintiff had not met his burden of producing evidence sufficient to place in issue material facts relative to that defendant's fault, and was not intended to, and did not, foreclose remaining codefendant's right to allege negligence of dismissed codefendant as a defense. [Golman v. Tesoro Drilling Corp.](#), C.A.5 (La.) 1983, 700 F.2d 249. [Summary Judgment](#) 63

Where ex-wife of defendant ex-president of plaintiff corporation, having been given proper notice of show cause hearing as coowner of conjugal estate, failed to meet her burden to show cause why she should not be bound by partial summary judgment in favor of corporation, there was no equitable reason why she should not be bound by summary judgment order. [Frito-Lay of Puerto Rico, Inc. v. Canas](#), D.C.Puerto Rico 1981, 92 F.R.D. 384. [Summary Judgment](#) 63

Interests of justice, partial summary judgment

District court's power to enter partial summary judgment should be used only in the infrequent harsh case as instrument for improved administration of justice. [RePass v. Vreeland](#), C.A.3 (N.J.) 1966, 357 F.2d 801. [Summary Judgment](#) 63

Advisory opinion, partial summary judgment

District court's ruling on motion for partial summary judgment by former inmates and criminal defense attorney, seeking determination that alleged violation of California Invasion of Privacy Act (CIPA) by inmate communication services provider at correctional facilities did not require intentional recording of private communications between inmates and their attorneys, would not result in advisory opinion on merely hypothetical or academic issue, under summary judgment rule that allowed movant to identify each claim or defense, or part of each claim or defense, on which summary judgment was sought, since movants sought summary judgment on one element of their CIPA claim. [Romero v. Securus Technologies, Inc., S.D.Cal.2018, 331 F.R.D. 391. Constitutional Law](#) 🏠 2604

Complicated issues, partial summary judgment

Denial of motion for partial summary judgment because issues involved were complicated was not error. [Safe Flight Instrument Corp. v. McDonnell-Douglas Corp., C.A.9 \(Cal.\) 1973, 482 F.2d 1086, 178 U.S.P.Q. 13, certiorari denied 94 S.Ct. 843, 414 U.S. 1113, 38 L.Ed.2d 740, 180 U.S.P.Q. 97. Summary Judgment](#) 🏠 63

Damages, partial summary judgment

District court would deny as premature motion for summary judgment seeking to limit damages, on claims under federal and North Carolina False Claims Acts by professional medical corporation that employed physicians brought action against operator of two hospitals, alleging that operator unlawfully terminated corporation's contracts to provide physician staffing for emergency rooms; operator sought to limit, as matter of law, claims for "lost profit" damages resulting from termination of emergency room services contracts, and questions of whether medical corporation suffered net loss of income, and, if so, how much, were primarily factual issues that should be decided only after all relevant discovery had concluded. [Mason v. Health Management Associates, LLC, W.D.N.C.2022, 638 F.Supp.3d 566. Summary Judgment](#) 🏠 275

Plaintiff's motion for partial summary judgment on issue of damages was in improper form, where facts and conclusions plaintiff wished to establish would not dispose of any of its claims entirely. [Evergreen Intern., S.A. v. Marinex Const. Co., Inc., D.S.C.2007, 477 F.Supp.2d 697. Summary Judgment](#) 🏠 63

When ruling on partial summary judgment motion, district court may indicate extent to which amount of damages is not in controversy. [Reynolds v. S & D Foods, Inc., D.Kan.1993, 822 F.Supp. 705, certification granted 1993 WL 246091. Summary Judgment](#) 🏠 63

Even in the absence of specific facts on specific parts of plaintiff's damages claim, defendant would not be entitled to partial summary judgment as a matter of law on damage claims. [Oberweis Dairy, Inc. v. Associated Milk Producers, Inc., N.D.Ill.1982, 553 F.Supp. 962. Summary Judgment](#) 🏠 63

In treble damages action for alleged violations of federal antitrust laws, material fact issues existed concerning damages, precluding summary judgment on damages question. [Tose v. First Pennsylvania Bank, E.D.Pa.1980, 492 F.Supp. 246, affirmed 648 F.2d 879, certiorari denied 102 S.Ct. 390, 454 U.S. 893, 70 L.Ed.2d 208. Antitrust And Trade Regulation](#) 🏠 980; [Summary Judgment](#) 🏠 104

Summary judgment on issue of damages could not be rendered in contract action in which opposing parties put forward two mutually exclusive rules, each alleged to provide proper measure of damages, and court could not determine which rule was applicable without further factual inquiry. [L. Orlik Ltd. v. Helme Products Inc., S.D.N.Y.1977, 427 F.Supp. 771. Summary Judgment](#) 🏠 123

Where defendant had not contested the fact that a portion of the amount sought by plaintiff in one claim was due but did contest other amounts sought in the same claim, court, rather than granting partial summary judgment on that amount, would enter order specifying that the amount conceded to be due was actually due without substantial controversy and that, upon trial of the action, the fact would be deemed established. [Bonda's Veevoederfabriek Provimi, B.V. v. Provimi, Inc., E.D.Wis.1976, 425 F.Supp. 1034, 196 U.S.P.Q. 248. Summary Judgment](#) 🏠 63

Where there was no dispute as to major portion of damages claimed by plaintiff, summary judgment could properly be rendered as to such amount. [Alleghany Corp. v. Romco, Inc.,](#)

[W.D.Pa.1975, 392 F.Supp. 38. Summary Judgment](#) 📌 101

Affidavit and pleadings raised fact issue as to how many hours employee had agreed to work weekly, precluding partial summary judgment on question of damages in employee's action to recover allegedly unpaid overtime compensation. [Newmark v. Triangle Aluminum Industries, Inc., N.D.Ga.1967, 277 F.Supp. 480. Summary Judgment](#) 📌 63

Buyer and seller disputing whether first contract was superseded by a second contract were not entitled to summary judgment ruling as to appropriate measure of damages should trial or later motion practice resolve crucial issue one way or other. [Kendall McGaw Laboratories, Inc. v. Community Memorial Hosp., D.N.J.1989, 125 F.R.D. 420. Sales](#) 📌 2820; [Summary Judgment](#) 📌 232

Liability, partial summary judgment

Vessel owner could move for partial summary judgment on issue of liability limitation, in cruiseship passenger's action seeking to recover damages for injuries she allegedly sustained as a result of virus she contracted aboard cruiseship, even though the motion did not resolve any entire claim or defense without merit. [Paul v. Holland America Line, Inc., W.D.Wash.2006, 463 F.Supp.2d 1203. Summary Judgment](#) 📌 63

Federal practice does not provide for "partial" summary judgment, however, federal practice does allow summary judgment on the issue of liability alone; court may enter a summary judgment order, interlocutory in character, on the issue of liability alone, although there is a genuine issue as to the amount of damages, however, in a case where the fact of damage or injury is an element of the claim, there can be no liability without proof that there is injury or damage. [Patrick Schaumburg Automobiles, Inc. v. Hanover Ins. Co., N.D.Ill.2006, 452 F.Supp.2d 857. Summary Judgment](#) 📌 63

Order granting partial summary judgment on liability issues is interlocutory in nature. [Citibank \(South Dakota\), N.A. v. F.D.I.C., D.D.C.1994, 857 F.Supp. 976. Summary Judgment](#) 📌 63

Issues as to surety's liability to contractor under subcontractor's performance bond and as to nature and extent of contractor's consequential damages precluded partial summary judgment for contractor as to liability for consequential damages. [Marshall Contractors, Inc. v. Peerless Ins. Co., D.R.I.1993, 827 F.Supp. 91. Principal And Surety](#) 📌 65; [Summary Judgment](#) 📌 123

Court cannot enter "judgment" regarding sub-issues of liability but may enter "judgment" regarding complete issue of liability only; however, court may remove "sham" or uncontested sub-issues from consideration. [Pantry, Inc. v. Stop-N-Go Foods, Inc., S.D.Ind.1992, 796 F.Supp. 1164. Summary Judgment](#) 📌 355

Even if there was genuine dispute as to amount due on breach of contract counterclaim, summary judgment as to liability for breach of contract would be proper, subject to subsequent hearing for purpose of determining exact amount due. [American Training Service, Inc. v. Commerce Union Bank, M.D.Tenn.1976, 415 F.Supp. 1101, affirmed](#) 612 F.2d 580. [Summary Judgment](#) 📌 63

In landlord's action against tenant to recover compensation for destruction by fire of leased premises, wherein the cross motions for summary judgment were primarily directed to question of liability under the lease in absence of proof of negligence, and there was scant evidence in the record on question of negligence, court would grant tenant's motion for summary judgment as to liability and retain for trial a possible claim of tenant's negligence. [Milwaukee Land Co. v. Basin Produce Corp., E.D.Wash.1975, 396 F.Supp. 528. Summary Judgment](#) 📌 63

In action by Federal Trade Commission for injunctive relief and civil penalties for violations of final order requiring corporation to divest itself of subsidiary, district court could render partial summary judgment on issue of corporation's liability and reserve issue of appropriate relief. [U. S. v. Papercraft Corp., W.D.Pa.1975, 393 F.Supp. 408. Summary Judgment](#) 📌 63

Motion for partial summary judgment is proper procedure on issue of liability in proper cases. [Consolidated Coal Co. v. United Mine Workers of America, Local Union No. 6869, S.D.W.Va.1973, 362 F.Supp. 1073. Summary Judgment](#) 📌 63

Pleadings and affidavits, in private antitrust action seeking treble damages and injunctive relief raised issues of fact precluding partial summary judgment for plaintiff on issue of liability, and precluding summary judgment for defendant dismissing the complaint.

[Carswell Trucks, Inc. v. International Harvester Co., S.D.N.Y.1971, 334 F.Supp. 1238.](#)

[Summary Judgment](#) 63; [Summary Judgment](#) 104; [Summary Judgment](#) 316

Plaintiff's motion for "partial summary judgment" would be construed as motion for summary judgment on issue of liability on one-count complaint. [Capitol Records, Inc. v. Progress Record Distributing, Inc., N.D.Ill.1985, 106 F.R.D. 25.](#) [Summary Judgment](#) 278(1)

Partial summary judgment in action arising out of a commercial dispute of substantial financial significance would be denied where central claim appeared to be based on an account stated and allegedly due in an amount in excess of 2.5 million dollars and plaintiff requested court to determine defendants' liability for such a substantial sum on basis of affidavit and disposition testimony only. [Toyoshima Corp. of California v. General Footwear, Inc., S.D.N.Y.1980, 88 F.R.D. 559.](#) [Summary Judgment](#) 63

Class actions, partial summary judgment

In class action for injunctive relief and declaratory judgment that [West's Ann.Cal. Welfare & Inst. Code, § 508](#) authorizing confinement of juveniles, who were wards of Youth Authority and who had been adjudicated delinquent, in institution was unconstitutional, genuine issues of material fact as to whether institution was in nature of a prison, extent to which institution provided rehabilitative treatment to Youth Authority wards and as to effect of mingling adult felons in juvenile wards precluded summary judgment for defendants and precluded partial summary judgment which plaintiffs sought on claim that commitment of juveniles to institution was unconstitutional. [Taylor v. Breed, N.D.Cal.1973, 58 F.R.D. 101.](#) [Summary Judgment](#) 63; [Summary Judgment](#) 134

Declaratory judgment, partial summary judgment

In action for a declaratory judgment brought against insured by four insurers who had issued policies containing a value reporting clause under which insured agreed to make monthly reports of total cash value of insured property at each location and under which coverage was to extend only to amount included in last report of values if such reports were not made by insured, who claimed value of property at time of fire was over \$32,000 but whose last report stated value of goods to be slightly over \$14,000, court did not have power to issue a partial summary judgment for slightly over \$14,000 since there was but a single claim made by insured. [Commonwealth Ins. Co. of N.Y. v. O. Henry Tent & Awning Co., C.A.7 \(Ill.\) 1959, 266 F.2d 200.](#) [Summary Judgment](#) 63

Injunction, partial summary judgment

United States was not entitled, on motion for partial summary judgment, to a permanent injunction against use of mining claims for other than mining purposes where United States was seeking further and additional remedies in the proceedings, but United States would be entitled to injunction pendente lite, upon proper motion, enjoining defendants from using property for nonmining purposes. [U.S. v. Springer, C.D.Cal.1970, 321 F.Supp. 625,](#) affirmed [478 F.2d 43.](#) [Mines And Minerals](#) 38(7)

Defenses, partial summary judgment--Generally

Partial summary judgment may be used to dispose of affirmative defenses. [International Ship Repair and Marine Services, Inc. v. St. Paul Fire and Marine Ins. Co., M.D.Fla.1996, 944 F.Supp. 886.](#) [Summary Judgment](#) 63

Motion for partial summary judgment for dismissal of an affirmative defense was improper. [Uniroyal, Inc. v. Heller, S.D.N.Y.1974, 65 F.R.D. 83.](#) [Summary Judgment](#) 63

---- Estoppel, defenses, partial summary judgment

Where court, on motion for summary judgment by plaintiff in suit to impress constructive trust on money defendant supplier had allegedly paid plaintiff's agent for sales defendant made to plaintiff through agent, was not prepared to hold that defendant could not make issue of fact on question of estoppel, court would order trial of action, though limited to affirmative defense of claim of estoppel. [Sears, Roebuck & Co. v. American Plumbing & Supply Co., E.D.Wis.1956, 19 F.R.D. 334.](#) [Summary Judgment](#) 63; [Summary Judgment](#) 355

---- Immunity, defenses, partial summary judgment

Where ruling by federal district court in civil rights action that auxiliary police officers acted under color of law would not be conclusive as to any claim asserted by plaintiffs, court would not rule on the issue on motion for partial summary judgment. [Goodrich v. Gonzalez](#), E.D.N.Y.1978, 451 F.Supp. 747. [Summary Judgment](#) 🏷️ 115

---- Jurisdiction, defenses, partial summary judgment

Order of dismissal and not grant of summary judgment is proper method for disposing of action in which subject matter jurisdiction is lacking. [Capitol Industries-EMI, Inc. v. Bennett](#), C.A.9 (Cal.) 1982, 681 F.2d 1107, certiorari denied 102 S.Ct. 1438, 455 U.S. 943, 71 L.Ed.2d 655, on remand 560 F.Supp. 134, certiorari denied 103 S.Ct. 570, 459 U.S. 1087, 74 L.Ed.2d 932, certiorari denied 103 S.Ct. 1189, 459 U.S. 1203, 75 L.Ed.2d 435. [Federal Courts](#) 🏷️ 2086; [Summary Judgment](#) 🏷️ 28

A motion for partial summary judgment is intended to be used in connection with the merits of an action and, hence, it is improper for use when challenging subject-matter jurisdiction inasmuch as issue of jurisdiction is a matter in abatement rather than in bar. [Marshall v. Baker](#), N.D.N.Y.1980, 500 F.Supp. 145. [Summary Judgment](#) 🏷️ 63

---- Res judicata, defenses, partial summary judgment

Where certain questions put in issue and determined in prior prosecution for conspiracy were raised by government's civil complaint alleging conspiracy to engage in fraudulent scheme to obtain United States property in connection with its disposition under law, questions were res judicata and government was entitled to partial summary judgment as to them. [U. S. v. Myers](#), N.D.Cal.1964, 38 F.R.D. 194. [Res Judicata](#) 🏷️ 422; [Summary Judgment](#) 🏷️ 63

---- Miscellaneous defenses, partial summary judgment

Any finding by the court that law firm and its partners were not entitled to affirmative defense would not also demonstrate that they violated Fair Debt Collection Practices Act (FDCPA) as matter of law, precluding summary judgment in favor of homeowner, in her action alleging FDCPA violations in relation to underlying Connecticut state-court foreclosure actions against her, on grounds that affirmative defense could not defeat her claim; defendants' affirmative defense was, by definition, unrelated to homeowner's allegations. [Derisme v. Hunt Leibert Jacobson P.C.](#), D.Conn.2012, 880 F.Supp.2d 339, motion to amend denied 2013 WL 1187046, appeal dismissed. [Finance, Banking, And Credit](#) 🏷️ 1612; [Summary Judgment](#) 🏷️ 145(2)

In damages action for refusal to offer to transfer or assign to lessee interests in leases and subleases of retail gas stations, affirmative defense that lessee failed to comply with Petroleum Marketing Practices Act did not preclude partial summary judgment for lessee, in absence of allegations detailing noncompliance. [Midwest Petroleum Co. v. American Petrofina, Inc.](#), E.D.Mo.1985, 603 F.Supp. 1099. [Summary Judgment](#) 🏷️ 57

Chemical company, whose summary judgment allegations were unopposed that it manufactured herbicide used by military in Vietnam pursuant to contract, that government set specifications, that it performed to specifications, and that it knew of no health hazard connected with herbicide, was entitled to government contract defense against liability to Vietnam veterans and their relatives, who sought to recover damages for injuries allegedly suffered as result of exposure to herbicide. [In re Agent Orange Product Liability Litigation](#), E.D.N.Y.1983, 565 F.Supp. 1263. [Products Liability](#) 🏷️ 177; [Products Liability](#) 🏷️ 222

In action seeking to recover for breaches of two alleged trade secret license agreements, affirmative defenses, one of which alleged that plaintiff misused the alleged trade secret and thus could not collect royalties until it had purged that misuse, raised genuine issues of material fact precluding partial summary judgment for plaintiff on minimum balance allegedly due. [Triangle Ink & Color Co., Inc. v. Sherwin-Williams Co.](#), N.D.Ill.1974, 64 F.R.D. 536, 185 U.S.P.Q. 142. [Summary Judgment](#) 🏷️ 63

Waiver, partial summary judgment

Minority member of limited liability company (LLC), by failing, in its opposition to majority member/sole manager's motion for partial summary judgment, which motion encompassed minority member's claim for breach of implied covenant of good faith and fair dealing, to raise member/manager's operational decisionmaking as independent ground for minority member's claim for breach of implied covenant, waived the right to raise that issue thereafter; at oral argument regarding motion for partial summary judgment, minority

member's counsel merely mentioned operational decisionmaking briefly, in context of unwarranted liquidation of LLC being basis of claim for breach of implied covenant. [Eldridge v. Gordon Brothers Group, LLC, D.Mass.2016, 316 F.R.D. 12](#), affirmed in part, vacated in part 863 F.3d 66. [Summary Judgment](#) 🔑 286

Administrative proceedings, partial summary judgment

Motion for summary judgment, especially for partial summary judgment, makes no procedural sense when district court is asked to undertake judicial review of administrative action, because such motion is designed to isolate factual issues on which there is legitimate dispute, so that court can determine what part of case must be tried to court or jury, but agency action is reviewed, not tried; factual issues have been presented, disputed, and resolved, and issue is not whether material facts are disputed, but whether agency properly dealt with facts. [Lodge Tower Condominium Ass'n v. Lodge Properties, Inc., D.Colo.1995, 880 F.Supp. 1370](#), affirmed 85 F.3d 476. [Administrative Law And Procedure](#) 🔑 2003

Admiralty and maritime actions, partial summary judgment

Vessel owner's motion for partial summary judgment on factual allegations supporting seaman's unseaworthiness and negligence claims was in improper form, where the motion essentially sought to strike certain allegations from the complaint as unsupported, rather than to establish as undisputed any element of seaman's unseaworthiness or negligence claims prior to trial. [Collins v. Cottrell Contracting Corp., E.D.N.C.2010, 733 F.Supp.2d 690](#). [Summary Judgment](#) 🔑 63

As plaintiff seaman, who allegedly sustained wrist injuries while assisting a tug deckhand in letting go the lines from barge to tanker, alleged that he was acting as a member of the tug's crew at the time of his injuries, that was sufficient to overcome the motion by the owners and operators of the tug to dismiss plaintiff's unseaworthiness claim as to them; and furthermore, entry of partial summary judgment for those defendants was precluded by the fact that the evidence presented a material issue of fact as to whether plaintiff was doing crew work for the tug. [Reilly v. B No. 100 Corp., E.D.N.Y.1977, 424 F.Supp. 935](#). [Federal Civil Procedure](#) 🔑 1781; [Summary Judgment](#) 🔑 63

Record presented issues of fact as to whether or not a stevedore was engaged in unloading at time of his injury, and as to whether shipowner had knowledge of defective bands on certain bales but failed to warn stevedore, precluding partial summary judgment for shipowner on charge of unseaworthiness, and precluding summary dismissal of charge of negligence. [Fitzmaurice v. Calmar S.S. Corp., E.D.Pa.1961, 198 F.Supp. 304](#). [Shipping](#) 🔑 86(3); [Summary Judgment](#) 🔑 201

Antitrust actions, partial summary judgment

In publishing company's antitrust action alleging that defendants had unreasonably restrained competition in market for advertising in electronics catalog industry, evidence raised substantial fact issue concerning definition of relevant market which precluded partial summary judgment on that issue. [Hayden Pub. Co., Inc. v. Cox Broadcasting Corp., C.A.2 \(N.Y.\) 1984, 730 F.2d 64](#). [Antitrust And Trade Regulation](#) 🔑 980; [Summary Judgment](#) 🔑 104

Where plaintiffs were unable to point to any evidence tending to support allegations of count of complaint asserting claim for treble damages for alleged violation of Sherman Antitrust Act, §§ 1 to 7 of Title 15, federal district court did not err in determining that there was no genuine issue of any material fact with respect to those allegations and in granting defendant's motion for partial summary judgment. [Bond Distributing Co. v. Carling Brewing Co., C.A.4 \(Md.\) 1963, 325 F.2d 158](#). [Summary Judgment](#) 🔑 63

Court could enter partial summary judgment, as to whether agreement of proposed manufacturers of generic antibiotic ciprofloxacin hydrochloride (Cipro) to delay entry into market, in return for payments by brand name manufacturer, was per se illegal market allocation agreement violating Sherman Act § 1, even though judgment would not resolve all issues of case. [In re Ciprofloxacin Hydrochloride Antitrust Litigation, E.D.N.Y.2003, 261 F.Supp.2d 188](#). [Summary Judgment](#) 🔑 63; [Summary Judgment](#) 🔑 104

Even if there was an issue as to whether professional basketball player had an adequate remedy at law so as to preclude issuance of a permanent injunction enjoining National Basketball Association from enforcing its bylaws prohibiting a qualified player from signing

with an NBA team until four years after his high school class graduation, partial summary judgment on narrow issue whether bylaw constituted a violation of antitrust laws was not barred. [Denver Rockets v. All-Pro Management, Inc., C.D.Cal.1971, 325 F.Supp. 1049. Summary Judgment](#) 🏠 63

In complex antitrust suit for treble damages and injunctive relief in which a series of separate transactions were involved, motion for partial summary judgment was not subject to dismissal as splitting up the various wrongs asserted in a single count. [Checker Motors Corp. v. Chrysler Corp., S.D.N.Y.1968, 283 F.Supp. 876, affirmed 405 F.2d 319, certiorari denied 89 S.Ct. 1595, 394 U.S. 999, 22 L.Ed.2d 777. Summary Judgment](#) 🏠 63

In action for violation of antitrust laws, plaintiff's motion for partial summary judgment would be denied in view of existence of material factual issues. [Brager & Co., Inc. v. Leumi Securities Corp., S.D.N.Y.1979, 84 F.R.D. 220. Summary Judgment](#) 🏠 63

Bankruptcy, partial summary judgment

Bankruptcy court did not abuse its discretion in granting partial summary judgment to real estate developer prior to the commencement of discovery in adversary proceeding against Chapter 11 debtor seeking declaration regarding the rights and interests each party had in escrowed funds; although debtor had requested additional discovery time in its response in opposition to developer's summary judgment motion, debtor's response was only a general statement that it had yet to conduct any discovery and should be afforded an opportunity to discover matters to contravene them, and debtor failed to shed light on what facts needed to be developed, why they were not available, and how additional time would enable it to rebut developer's allegations of no genuine issue of material fact. [In re Expert South Tulsa, LLC, 10th Cir.BAP \(Kan.\) 2014, 522 B.R. 634, affirmed 619 Fed.Appx. 779, 2015 WL 6123222, on remand 2018 WL 1588410. Bankruptcy](#) 🏠 2164.1

Partial summary judgment could not be entered to dispose of part of a single claim by debtor under § 1101 et seq. of Title 11 that it owned certain container units free and clear of any claims by creditor. [In re Seatrain Lines, Inc., Bkrcty.S.D.N.Y.1982, 19 B.R. 929. Summary Judgment](#) 🏠 63

Bonds, partial summary judgment

A partial summary judgment of federal district court dismissing plaintiff's complaint with respect to items in first category in action on commercial blanket bond, which defendant had issued to plaintiff, and by which defendant agreed to indemnify plaintiff against any loss that plaintiff might sustain through any fraudulent or dishonest acts of agents, on ground that bond required written agency agreement, was improper, where it was an issue of fact whether bond required written agency agreement. [Standard Title Ins. Co. v. United Pac. Ins. Co., C.A.8 \(Mo.\) 1966, 364 F.2d 287. Summary Judgment](#) 🏠 63

General contractor on school construction project was not entitled to partial summary judgment with respect to surety's affirmative defenses, which were responsive to general contractor's claim seeking reformation of subcontractor's performance bond so as to name general contractor as obligee, which general contractor had only been granted leave to add and had not yet been filed. [Princeton Restoration Corp. v. International Fidelity Ins. Co., E.D.N.Y.2004, 338 F.Supp.2d 391. Summary Judgment](#) 🏠 63

Boycotts, partial summary judgment

Summary judgments may be appropriate in group boycott case, and a partial summary judgment likewise may be appropriate. [Blalock v. Ladies Professional Golf Ass'n, N.D.Ga.1973, 359 F.Supp. 1260. Summary Judgment](#) 🏠 63; [Summary Judgment](#) 🏠 104

Conspiracy, partial summary judgment

In absence of any factual basis for contending that sheriff and operator of pool hall conspired to deprive plaintiff of his constitutional rights, defendants' motion for summary judgment would be granted as to the conspiracy issue with proviso that if plaintiff should move within ten days to reopen issue leave would be granted to file materials to indicate existence of issue. [Martynn v. Darcy, E.D.La.1971, 333 F.Supp. 1236. Summary Judgment](#) 🏠 358

Contracts, partial summary judgment

Motion for partial summary judgment was proper means for seller alleging breach of contract to seek ruling that parent corporation was joint venture with buyer, where

resolution of issue involved only legal issues related to agency elements, not factual adjudication. [Servicios Especiales Al Comercio Exterior v. Johnson Controls, Inc., E.D.Wis.2011, 791 F.Supp.2d 626. Summary Judgment](#) 🗝️ 208

Plaintiff, whose complaint provided specific notice that breach of contract claim was premised on conduct by defendant subsequent to expiration of agreement's initial 12-month term, was entitled to move for partial summary judgment on claim that defendant remained bound by agreement, since a necessary predicate for alleged breach was contract's viability during second 12-month period, and plaintiff was also entitled to move for partial summary judgment on claim for sales commissions since complaint expressly sought damages for "commissions remaining unpaid * * * on equipment sold by others than Plaintiff in its territory." [Hawes Office Systems, Inc. v. Wang Laboratories, Inc., E.D.N.Y.1982, 537 F.Supp. 939. Summary Judgment](#) 🗝️ 63

Although an offset on antitrust claim, which was not at issue in summary judgment motion on contract claim, could ultimately diminish recovery on the contract claim it did not defeat recovery thereon and, hence, did not preclude resolution of contract claim at instant stage of proceedings and court could enter summary judgment on the contract claim but stay enforcement of final judgment until antitrust claims were resolved. [Electrogilas, Inc. v. Dynatex Corp., N.D.Cal.1979, 473 F.Supp. 1167. Federal Civil Procedure](#) 🗝️ 2575; [Summary Judgment](#) 🗝️ 104

While there was no doubt that seller of paddle tennis mittens and sweaters was entitled to recover something for goods delivered and retained by buyer, a full trial on the merits was required to determine if the goods were defective and to determine value of the goods and, inasmuch as issues which were capable of summary disposition were so intertwined with triable issues, partial summary judgment in favor of seller was inappropriate. [Berman v. Royal Knitting Mills, Inc., S.D.N.Y.1980, 86 F.R.D. 124. Summary Judgment](#) 🗝️ 63

Entry of partial summary judgment on quasi-contractual claims of subcontractor against builder would be improper, where one of claimed issues of fact in dispute between parties was whether the subcontractor's claim and builder's counterclaim were separable or inseparable, independent or closely related. [Bethlehem Steel Corp. v. Tishman Realty & Const. Co. Inc., S.D.N.Y.1976, 72 F.R.D. 33. Summary Judgment](#) 🗝️ 63

After mobile home manufacturer's motion for partial summary judgment dismissing mobile home dealer's claims under Automobile Dealers Suit Against Manufacturers Act, § 1221 et seq., of Title 15, § 2 of Title 15, and § 13 of Title 15 was sustained, leaving viable claims by dealer for breach of oral agreement, violation of R.C.W.A. 19.86 et seq. and violation of R.C.W.A. 46.70 et seq. entry of final judgment with respect to federal claims was proper. [Purdy Mobile Homes, Inc. v. Champion Home Builders Co., E.D.Wash.1976, 71 F.R.D. 341, affirmed 594 F.2d 1313. Summary Judgment](#) 🗝️ 63

Record in suit by Tennessee Valley Authority for declaratory and injunctive relief against contractor for repudiation of two contracts to supply nuclear fuel for two of Tennessee Valley Authority's electrical power plants was insufficient for determination whether the "delays and remedies" provisions of the contracts should be looked to in determining the rights and liabilities of the parties, and issues of material fact as to whether the contingencies listed in the excuse clause had occurred precluded partial summary judgment for Tennessee Valley Authority. [Tennessee Valley Authority v. Westinghouse Elec. Co., E.D.Tenn.1975, 69 F.R.D. 5. Summary Judgment](#) 🗝️ 63

Education, partial summary judgment

In order to remove cloud created on sale and issuance of school bonds by pendency of action to restrain issuance and sale of the bonds on ground that proceeds might be spent in way to encourage segregated school system, district court properly granted partial summary judgment and entered final order holding that controversy over expenditure of proceeds did not affect validity of bonds or the right of county to issue them or its obligation to pay principal and interest as they became due. [Allen v. State Bd. of Ed. of N.C., C.A.4 \(N.C.\) 1971, 447 F.2d 960, certiorari denied 92 S.Ct. 948, 405 U.S. 920, 30 L.Ed.2d 790. Summary Judgment](#) 🗝️ 63

Employment, partial summary judgment

In civil rights action by teacher who was dismissed, substantial fact issue existed as to whether her dismissal was based on her misconduct, rather than on free speech activities,

precluding partial summary judgment in favor of teacher. [Gilbertson v. McAlister, D.C.Conn.1974, 383 F.Supp. 1107. Summary Judgment](#) 📌 63

In action to recover compensation for overtime, for unrecovered vacation pay and for sums withheld by defendant by virtue of an alleged illegal charge-back system, which rights were alleged to exist under laws of the commonwealth of Puerto Rico to be more favorable to plaintiffs than federal law, defendant was not entitled to partial summary judgment in view of depositions accompanying the motion which showed existence of genuine issues of fact. [Maldonado v. International Business Machines Corp., D.C.Puerto Rico 1972, 56 F.R.D. 452. Summary Judgment](#) 📌 63

Environmental actions, partial summary judgment

Environmental organizations did not abandon claims under National Forest Management Act (NFMA), Federal Land Policy and Management Act (FLPMA), and Endangered Species Act (ESA) by moving for summary judgment only on National Environmental Policy Act (NEPA) claims; organizations, in their supporting declarations, alerted Court to correspondence between counsel that gave organizations reasonable understanding that moving for partial summary judgment on their NEPA claims alone would not terminate their ability to seek relief on their other claims. [Conservation Northwest v. Rey, W.D.Wash.2009, 674 F.Supp.2d 1232, appeal dismissed. Summary Judgment](#) 📌 63

Trial court did not decide issue outside of those presented for court's determination when it granted motion for partial summary judgment holding that retailers violated Clean Air Act (CAA) by selling or distributing pesticide for reptile ectoparasites containing Class II substance; motion requested court to hold that any sale or distribution of pesticide by retailers constituted violation of CAA, and that if court found that retailers did, in fact, sell or distribute pesticide, plaintiff requested court to grant summary judgment against retailers. [Pound v. Airosol Company, Inc., D.Kan.2004, 368 F.Supp.2d 1158. Summary Judgment](#) 📌 140

Federal Employers Liability Act, partial summary judgment

Extended and detailed affidavits plus submission of complicated diagram and oral argument failed to disclose that there was no genuine issue of material fact as claimed by employee moving for partial summary judgment on issue of liability in action under Federal Employers' Liability Act, § 51 et seq. of Title 45, for personal injuries sustained in course of employment, and summary judgment was denied. [La Rosa v. Pennsylvania R. Co., E.D.Pa.1968, 284 F.Supp. 400. Summary Judgment](#) 📌 187

Insurance actions, partial summary judgment

Entry of final summary judgment, as opposed to partial summary judgment, in favor of insured on cross-motions that were confined to issue of legal effect of pollution exclusion clause was error where judgment did not adjudicate commercial property insurer's other affirmative defenses to coverage. [Stillman v. Travelers Ins. Co., C.A.11 \(Fla.\) 1996, 88 F.3d 911. Summary Judgment](#) 📌 63

No order listing the remaining issues to be litigated was required when the district court, in a fourth-party action subsequent to the principal litigation, entered summary judgment against excess liability insurer for the amounts stevedore and insurance broker contributed toward consent judgment entered in favor of injured longshoreman, since, under the circumstances, no issues still remained to be litigated. [Lytle v. Freedom Intern. Carrier, S.A., C.A.6 \(Ohio\) 1975, 519 F.2d 129. Summary Judgment](#) 📌 356

Partial summary judgment for hospital against its insurer on question of coverage and liability for legal expenses was appropriate where hospital's affidavit established that hospital made tender of defense to insurer, insurer refused to defend all but one count of complaint, and attorney designated by insurer to defend patient's claim never participated in defense despite repeated requests to do so and where no counteraffidavits were filed. [Thoresen v. Roth, C.A.7 \(Ill.\) 1965, 351 F.2d 573. Summary Judgment](#) 📌 63

Insurers' request in declaratory judgment action for partial summary judgment on issue of liability for restaurant's alleged loss for decline in patronage was ripe for review, despite restaurant's pending damages action against insured in state court; court was not being asked to determine if insured, who supplied lettuce which allegedly caused food-borne illness outbreak, was liable for lost patronage claim, but, rather, the court was being asked to determine whether insured's potential liability under lost patronage claim would be

covered through underlying commercial liability policy. [National Union Fire Ins. Co. of Pittsburgh, PA v. Ready Pac Foods, Inc., C.D.Cal.2011, 782 F.Supp.2d 1047. Declaratory Judgment](#) 45; [Declaratory Judgment](#) 165

Court could render partial summary judgment in favor of insurer on liability alone on summary judgment motion seeking equitable contribution to costs of defending mutual insured where insurer had not submitted evidence of its expenses in moving for summary judgment. [Great American Ins. Co. of New York v. North American Specialty Ins. Co., D.Nev.2008, 542 F.Supp.2d 1203, reconsideration denied 2008 WL 1774981. Summary Judgment](#) 63

Fact issues about whether there were latent defects in insured vessel's hull or machinery and about whether insured had exercised due diligence in connection with such defects precluded granting insured's motion for partial summary judgment that sought to dismiss insurer's affirmative defenses to coverage based on presence of "Inchmaree" clause in marine insurance policy at issue. [International Ship Repair and Marine Services, Inc. v. St. Paul Fire and Marine Ins. Co., M.D.Fla.1996, 944 F.Supp. 886. Insurance](#) 2256; [Summary Judgment](#) 165

Insurer which failed to offer any evidence in support of its claim that exclusions for fraud, and dishonest acts, conflict of interest, and intentional violations of ERISA applied to bar liability under policy failed to carry burden of showing that exclusions applied so as to defeat motion for partial summary judgment. [Aks v. Southgate Trust Co., D.Kan.1994, 844 F.Supp. 650. Summary Judgment](#) 166

County's uninsured motorist insurer's claims that policy limit amounts were not "due and owing" because plaintiffs had not requested payment of remaining policy limits and had not filed written proof of loss as required by policy provisions did not establish genuine issue of material fact on motion for partial summary judgment in suit to recover for injuries and wrongful death resulting from accident involving automobile owned by county highway department. [Burke v. Aid Ins. Co., D.C.Kan.1980, 487 F.Supp. 831. Summary Judgment](#) 63

Fact questions were presented as to dates of notice of loss as evidenced by request for payment and as to actions of insurer claimed to be denial of liability, precluding partial summary judgment in action brought against insurer under Michigan No-Fault Act. [Andrews v. Allstate Ins. Co., E.D.Mich.1979, 479 F.Supp. 481. Summary Judgment](#) 63

Licenses, partial summary judgment

Trial court properly granted partial summary judgment enjoining the Attorney General of New Jersey and the State Board of Psychological Examiners from seeking the revocation or in any other way interfering with the license of the plaintiff to practice psychology in New Jersey except for reasons and in accordance with procedures set forth in [N.J.S.A. 45:1-21,, 45:14B-23, and 45:14B-24 \(Repealed\)](#) for the suspension or revocation of such licenses. [Herz v. Degnan, C.A.3 \(N.J.\) 1981, 648 F.2d 201. Injunction](#) 1375

Motion for partial summary judgment was proper to present constitutional claim challenging facial validity of entertainment licensing statutes, [M.G.L.A. c. 140, §§ 183A, 183C](#), where constitutional claim presented question of law and record established that there was live controversy and that parties at issue were subject to statute and thus any residual factual dispute was largely irrelevant to resolution of statutes' facial validity. [Venuti v. Riordan, D.C.Mass.1981, 521 F.Supp. 1027. Summary Judgment](#) 111

Mental distress, partial summary judgment

In action for emotional and mental disturbance to plaintiffs whose decedents were killed when dams broke, material issues of fact were presented as to whether the injuries were result of violation of federal and state safety regulations and intentional and wrongful conduct on part of defendants, precluding partial summary judgment for defendants, although plaintiffs had been far removed from any threat of physical harm at time of flood and had witnessed none to anyone else. [Prince v. Pittston Co., S.D.W.Va.1974, 63 F.R.D. 28. Summary Judgment](#) 63

Misrepresentations, partial summary judgment

While suit by manufacturer and distributor of steel rack against defendant distributor to recover for steel, in which defendant admitted owing for the steel racks but claimed there

were misrepresentations by plaintiff's salesman and alleged that it was entitled to offset, presented issues of fact precluding summary judgment for full amount of plaintiff's claim, since it clearly appeared that a specific, admitted sum was due plaintiff, partial summary judgment for that sum would be entered together with interest from date of defendant's answer admitting no contest as to this sum. [Interlake, Inc. v. Erie Indus. Trucks, Inc.](#), [W.D.Pa.1977](#), 427 F.Supp. 1012. [Summary Judgment](#) 63

Negligence actions, partial summary judgment

District court should have treated its ruling, that nurse's failure to attempt to use cord wrap of machine precluded any possible causation between alleged defect in wrap and her injuries, as one for partial summary judgment, such that its ruling would not be subject to rule requiring that motion to alter or amend judgment be served within ten days after entry of judgment and district court would retain power to deal with any aspect of lawsuit until its termination by entry of final and appealable order. [Deimer v. Cincinnati Sub-Zero Products, Inc.](#), [C.A.7 \(Ill.\) 1993](#), 990 F.2d 342, rehearing denied, on remand [1993 WL 266509](#). [Summary Judgment](#) 63

In medical malpractice suit brought against hospital and chief of hospital laboratory to recover for prenatal injuries sustained by infant as a result of allegedly negligent blood-typing by a lab technician, fact that the technician was in hospital's general employ did not necessarily prevent a finding that he was also a servant of the lab chief if he was subject to the chief's orders in respect to performing the blood test and recording its results; and since there was a fact question as to the control exercised by the chief in the lab, and his role vis-a-vis the hospital at the time of the incident, entry of partial summary judgment as to the chief's possible liability would be inappropriate. [Lazevnick v. General Hospital of Monroe County, M.D.Pa.1980](#), 499 F.Supp. 146. [Summary Judgment](#) 63

Where question of whether negligence of accountants in failing to accurately report financial status of corporation was the proximate cause of losses sustained by, and the financial demise of, the corporation for which accountants were working was disputed, the question could not be resolved by motion for partial summary judgment. [Shapiro v. Glekel](#), [S.D.N.Y.1974](#), 380 F.Supp. 1053. [Summary Judgment](#) 63

Where circumstances of automobile accident, as established by uncontroverted facts, proved that plaintiffs had not been guilty of contributory negligence, and uncontroverted facts elicited from depositions and defendant's interrogatories required compulsory inference of negligence, and defendant stated, in answer to interrogatory, that he would rely on those facts to establish nonliability for accident, plaintiffs' motion for partial summary judgment, adjudicating negligence of defendant, would be granted. [Baroff v. Becker](#), [E.D.N.Y.1961](#), 197 F.Supp. 9. [Summary Judgment](#) 63

Offset, partial summary judgment

Where purported "issues of fact" were actually legal issues and where motions for partial summary judgment specifically excluded issue of offset raised in claims for relief, existence of such "issues of fact" did not preclude federal district court from ruling on motions. [American Re-Insurance Co. v. Insurance Commission of State of Cal.](#), [C.D.Cal.1981](#), 527 F.Supp. 444. [Summary Judgment](#) 63

Partnerships, partial summary judgment

Where defendant partner and his wife carried on all activity with respect to partnership's claim against the government and finally obtained passage of special legislation for relief of the partnership after plaintiff partners allegedly abandoned the partnership or ceased to be partners, and therefore defendant partners claimed entire amount of arbitration award paid by the government into registry of court, and suit was brought by plaintiff partners for declaratory judgment, federal district court properly granted motion of plaintiff partners for partial summary judgment that the partnership referred to in the special legislation and in arbitration award was a partnership composed of plaintiff partners and defendant partner. [Luff v. Luff](#), [C.A.D.C.1956](#), 233 F.2d 702, 98 U.S.App.D.C. 211, certiorari denied [77 S.Ct. 99](#), 352 U.S. 882, 1 L.Ed.2d 79. [Summary Judgment](#) 63

Patents, partial summary judgment

Detailed application of function-way-result test, supported by deposition testimony from competitor's employees, was sufficient to create genuine issue of material fact for jury to resolve, precluding summary judgment of noninfringement of patent for diaper pail system. [Edgewell Personal Care Brands, LLC v. Munchkin, Inc.](#), [C.A.Fed. \(Cal.\) 2021](#), 989 F.3d

1358, rehearing granted, withdrawn 848 Fed.Appx. 909, 2021 WL 2138662, on rehearing 998 F.3d 917, on remand 2022 WL 18932811. Patents 📌 1935(1)

Where full hearing on merits of patent validity and infringement issues was necessary before any final determination could be made as to continued validity of exclusive license agreement, patent licensor's motion, in consolidated trial of licensor's breach of contract and patent infringement actions against patent licensee, for partial summary judgment adjudicating such license agreement to have been terminated would be denied. *Crane Co. v. Aeroquip Corp.*, N.D.Ill.1973, 356 F.Supp. 733, 177 U.S.P.Q. 666. Summary Judgment 📌 63

Entry of partial summary judgment on claim involving alleged misappropriation of patent application was inappropriate in view of unresolved issues of credibility. *Pate Co. v. RPS Corp.*, N.D.Ill.1978, 79 F.R.D. 356, 200 U.S.P.Q. 571. Summary Judgment 📌 63

Police actions, partial summary judgment

State court determination that plaintiff was guilty and conclusion that his confession was voluntary did not decide one of the questions before federal court as to whether or not defendant police officers mistreated plaintiff after he confessed so that there was a factual issue precluding summary judgment in federal action for damages. *Spencer v. Town of Westerly, R. I., Through Gervasini*, D.C.R.I.1977, 430 F.Supp. 636. See, also, *In re Griffith Bkrcty.* D.N.M.1980, 6 B.R. 750. Municipal Corporations 📌 742(6)

Real estate, partial summary judgment

Federal district court had jurisdiction to entertain motion for partial summary judgment in action brought by condominium purchasers to void their purchases even though it would not dispose entirely of at least one of the plaintiffs' claims. *Disandro v. Makahuena Corp.*, D.C.Hawaii 1984, 588 F.Supp. 889. Summary Judgment 📌 63

Even if claims of individual and corporate plaintiffs with regard to certain real estate were in a certain sense intertwined with all causes of action, where claims for reformation of option agreement and for specific performance and lis pendens as set forth in second and seventh causes of action were entirely distinct and separate claims, partial summary judgment as to such claims could be entered under rule 54 of these rules providing for entry of a final judgment as to one or more but fewer than all of claims. *Rea v. Ford Motor Co.*, W.D.Pa.1971, 326 F.Supp. 627, adhered to 355 F.Supp. 842, vacated on other grounds 497 F.2d 577, certiorari denied 95 S.Ct. 126, 419 U.S. 868, 42 L.Ed.2d 106, on remand 406 F.Supp. 271. Summary Judgment 📌 63

Securities and stocks, partial summary judgment

Although motion to strike was untimely since it was filed more than 20 days after service of answer in Resolution Trust Corporation's (RTC) suit against former directors and shareholders of failed savings and loan association, court would accept motion to strike affirmative defenses or for partial summary judgment, since partial summary judgment was appropriate. *Resolution Trust Corp. v. Vestal*, E.D.Tex.1993, 838 F.Supp. 305. Federal Civil Procedure 📌 1143; Summary Judgment 📌 63

If defendant brokerage firm, sued by customers for damages for alleged violation of antifraud provisions of federal securities laws, wished to move for partial summary judgment as to certain customers or transaction, allegation should be made as to which customers or transaction should be dismissed and defendant firm should specifically request findings to be made under provision of partial summary judgment rule. *Batchelor v. Legg & Co.*, D.C.Md.1971, 52 F.R.D. 545, supplemented 52 F.R.D. 553. Summary Judgment 📌 63

Trademarks, partial summary judgment

Where defendant made a clear and un rebutted showing that plaintiff's continued unauthorized use of sign and trademark created a likelihood that the public would be confused or deceived into believing that plaintiff was an authorized distributor of defendant's products and where, contrary to plaintiff's bald assertion that the sign did not identify plaintiff as an appointed distributor, the sign did convey the impression that plaintiff was an authorized dealer in defendant's products, defendant was entitled to partial summary judgment on its counterclaims for trademark infringement, unfair competition and unfair trade practices, notwithstanding the pendency of plaintiff's complaint for breach of contract arising from defendant's termination of a distributorship agreement with plaintiff.

[Prompt Elec. Supply Co., Inc. v. Allen-Bradley Co., E.D.N.Y.1980, 492 F.Supp. 344, 210 U.S.P.Q. 569. Summary Judgment 🏠 63](#)

Warranty actions, partial summary judgment

Existence of material issue of fact as to whether tire distributor was entitled to recover losses suffered by distributor of customer adjustments in excess of two percent of new tire sales precluded partial grant of summary judgment in favor of manufacturer in distributor's action against manufacturer for breach of warranty. [Olin's Tire Service, Inc. v. U. S. Rubber Co., C.A.5 \(Fla.\) 1967, 382 F.2d 852. Summary Judgment 🏠 63](#)

Fact issues about whether insured willfully breached marine insurance policy's limited warranty of seaworthiness precluded granting insured's motion for partial summary judgment that sought to dismiss insurer's affirmative defenses to coverage based on presence of "held covered" clause in policy. [International Ship Repair and Marine Services, Inc. v. St. Paul Fire and Marine Ins. Co., M.D.Fla.1996, 944 F.Supp. 886. Insurance 🏠 2256; Summary Judgment 🏠 165](#)

In action for personal injuries raising statutory implied warranties as theory of recovery, there was genuine issue of material fact as to existence of sale, precluding partial summary judgment on "sale" claim. [Chance v. Richards Mfg. Co., Inc., E.D.Wash.1980, 499 F.Supp. 102. Summary Judgment 🏠 63](#)

Miscellaneous cases granted, partial summary judgment

Even though two claims remained pending in district court, summary judgment dealing only with third claim was final, where district court expressly determined that there was no just reason for delay and expressly directed entry of judgment. [Bushie v. Stenocord Corp., C.A.9 \(Ariz.\) 1972, 460 F.2d 116. Federal Courts 🏠 3359](#)

In five consolidated personal injury actions against railroad, resulting from an accident at a tunnel project, railroad's motion for partial summary judgment on its third-party complaint alleging contractual indemnification claims against general contractor and project managers was not premature, although railroad had not yet been found liable to injured workers, where there was a broad indemnification clause in relevant contracts that included a duty to defend railroad, a lawsuit had actually been filed against railroad, and railroad sought a ruling on whether contractors were obligated to defend it against claims arising out of its ordinary negligence. [Cevasco v. National R.R. Passenger Corp., S.D.N.Y.2009, 606 F.Supp.2d 401. Summary Judgment 🏠 275](#)

Miscellaneous cases denied, partial summary judgment

Nonmember employees' motion for partial summary judgment, declaring indemnification clauses of memorandum of understanding and collective bargaining agreement (CBA) between city and union void as against public policy and unenforceable, was moot; relief sought was unnecessary and redundant, having already been granted by Court of Appeals, and because issue of validity and enforceability had been decided by Court of Appeals, whose decision was binding on district court and parties, district court was without authority to rule on it. [Harrington v. City of Albuquerque, D.N.M.2004, 329 F.Supp.2d 1237. Federal Courts 🏠 2153](#)

District court lacked authority to grant "partial summary judgment" in favor of plaintiffs, who asserted claims under Warsaw Convention which arose from fatal airplane accident, in amount of \$75,000 liability limit of air carrier under Convention, even though Convention provides for strict liability on part of air carriers; demand for immediate payment was inseparable from claim that carrier had committed willful misconduct and thus was liable for damages over and above Convention's limitation, and summary judgment rule does not allow entry of such partial judgments. [In re Air Crash Disaster Near Warsaw, Poland on May 9, 1987, E.D.N.Y.1997, 979 F.Supp. 164. Summary Judgment 🏠 63](#)

As plaintiff seaman, who allegedly sustained wrist injuries while assisting a tug deckhand in letting go the lines from barge to tanker, alleged that he was acting as a member of the tug's crew at the time of his injuries, that was sufficient to overcome the motion by the owners and operators of the tug to dismiss plaintiff's unseaworthiness claim as to them; and furthermore, entry of partial summary judgment for those defendants was precluded by the fact that the evidence presented a material issue of fact as to whether plaintiff was doing crew work for the tug. [Reilly v. B No. 100 Corp., E.D.N.Y.1977, 424 F.Supp. 935. Federal Civil Procedure 🏠 1781; Summary Judgment 🏠 63](#)

Notice, partial summary judgment

District court's failure to give notice of its intent to enter partial summary judgment to insured on insurer's claim from return of funds it had paid to mortgage lender under homeowner's policy while its investigation of fire was ongoing on ground not briefed by parties required remand for further proceedings; insurer claimed that, had it been given opportunity to do so, it would have drawn district court's attention to cases allowing insurers to pursue their policyholders after paying off mortgage lender. [Merechka v. Vigilant Insurance Company, C.A.8 \(Ark.\) 2022, 26 F.4th 776](#), rehearing and rehearing en banc denied [2022 WL 1101347](#). [Federal Courts](#) 🔑 3781; [Summary Judgment](#) 🔑 285

PRACTICE AND PROCEDURE**Jurisdiction of district court, practice and procedure--Generally**

District court had subject-matter jurisdiction over employee's Rehabilitation Act claims in action that initially only asserted claims under ADA that were ultimately barred by sovereign immunity, since court already had permitted employee to add his Rehabilitation Act claims to his complaint prior to state agency's raising sovereign immunity defense on motion for summary judgment. [Levy v. Kansas Dept. of Social and Rehabilitation Services, C.A.10 \(Kan.\) 2015, 789 F.3d 1164](#). [Federal Courts](#) 🔑 2393

[Rule 56 of the Federal Rules of Civil Procedure](#) gives district court summary jurisdiction over all receivership proceedings and allows district court to disregard Federal Rules. [S.E.C. v. Elliott, C.A.11 \(Fla.\) 1992, 953 F.2d 1560](#). [Receivers](#) 🔑 1

When jurisdictional basis of claim is intertwined with merits, district court should apply [Rule 56](#) summary judgment standard when ruling on motion to dismiss which asserts factual attack on subject matter jurisdiction. [Lawrence v. Dunbar, C.A.11 \(Fla.\) 1990, 919 F.2d 1525](#). [Summary Judgment](#) 🔑 278(2)

Expeditious procedure for summary judgment in ordinary, plenary action was not summary trial, and court did not lack jurisdiction to determine respective rights of parties by use of summary judgment procedure. [Pueblo of Sandia ex rel. Chaves v. Smith, C.A.10 \(N.M.\) 1974, 497 F.2d 1043](#). [Summary Judgment](#) 🔑 1

Where requisite jurisdictional amount was involved at time of commencing action, the fact that plaintiff on remand alternatively reduced amount of demand in motion for summary judgment to conform to law applied by court of appeals would not ipso facto divest district court of jurisdiction. [Morris v. Prefabrication Engineering Co., C.A.5 \(Fla.\) 1950, 181 F.2d 23](#). [Federal Courts](#) 🔑 3798

Defendant's mere speculation that complete diversity might be lacking was not sufficient to warrant further discovery or to create genuine issue of material fact, for summary judgment purposes, regarding district court's subject matter jurisdiction, where verified statement offered by plaintiff established that none of partners in plaintiff partnership resided in same state as defendant. [Macke Laundry Service Ltd. Partnership v. Alleco Inc., D.Md.1989, 743 F.Supp. 382](#). [Federal Civil Procedure](#) 🔑 1275.5; [Summary Judgment](#) 🔑 208

Fact that less than an entire claim is settled by summary judgment ruling does not vitiate the court's jurisdiction to decide the issue. [Disandro v. Makahuena Corp., D.C.Hawaii 1984, 588 F.Supp. 889](#). [Summary Judgment](#) 🔑 63

Conflicting facts creating question of ultimate fact as to whether general agency relationship existed between Japanese parent corporation and New York subsidiary and also question of fact as to whether agency relationship arose out of specific circumstances underlying contract at issue in the suit presented factual issues precluding summary judgment on issue of personal jurisdiction. [Copiers Typewriters Calculators, Inc. v. Toshiba Corp., D.C.Md.1983, 576 F.Supp. 312](#). [Sales](#) 🔑 2781; [Summary Judgment](#) 🔑 232

Where facts alleged to confer jurisdiction were entwined with the merits of the case and thus were at issue in defendants' motions for summary judgment, court would not apply preponderance of the evidence standard in regard to existence of jurisdiction but would apply the more rigorous evidentiary standard for summary judgment. [Kemp Pontiac-Cadillac, Inc. v. Hartford Auto. Dealers' Ass'n, Inc., D.C.Conn.1974, 380 F.Supp. 1382](#). [Summary Judgment](#) 🔑 85

Pending appeal from order which relieved state of Ohio from a judgment which barred prosecution of class actions of all settled claims against stockholder and others did not divest the court of jurisdiction to entertain stockholder's motion for summary judgment, in Ohio's action against him, on theory that claims against him were barred by res judicata and collateral estoppel. [In re Four Seasons Securities Laws Litigation, W.D.Okla.1974, 370 F.Supp. 219. Federal Courts 3452](#)

---- **Counterclaims, jurisdiction of district court, practice and procedure**

After patent claims were resolved, common law factors did not favor exercise of supplemental jurisdiction over severed Lanham Act counterclaim; judicial economy was best served by dismissing counterclaim because it either guaranteed that single court would hear both parties' claims to extent they were related or simplified issues before future court to extent they were not, allowing parties to proceed on uncertain jurisdictional footing through summary judgment motions and then trial was inconvenient and unnecessary, fairness was best served by dismissing counterclaim without prejudice because Lanham Act did not establish limitations period for claims alleging unfair competition or false advertising, and comity was either irrelevant or neutral. [Genband US LLC v. Metaswitch Networks Ltd, E.D.Tex.2017, 248 F.Supp.3d 825. Federal Courts 2564](#)

In lessee's action for treble damages for rental overcharge, lessor's counterclaim for waste could not be entertained by federal court in absence of independent jurisdictional ground and the lessee was entitled to summary judgment. [Marks v. Spitz, D.C.Mass.1945, 4 F.R.D. 348. Federal Civil Procedure 780](#)

---- **Pendent claims, jurisdiction of district court, practice and procedure**

Since pendent causes of action are not subject of motion for summary judgment, they should be dismissed without prejudice to their disposition in state court when claims supporting federal jurisdiction are dismissed. [Daniels v. All Steel Equipment, Inc., C.A.5 \(Tex.\) 1979, 590 F.2d 111. Federal Courts 2564](#)

District court would exercise supplemental jurisdiction over village police lieutenant's state law claims against village and village employees, where some of lieutenant's § 1983 claims against those defendants survived summary judgment. [Frisenda v. Incorporated Village of Malverne, E.D.N.Y.2011, 775 F.Supp.2d 486. Federal Courts 2544](#)

District court would decline to exercise supplemental jurisdiction over employee's state law claims arising from his termination, since all federal employment discrimination claims in action were dismissed on summary judgment. [Melendez-Ortiz v. Wyeth Pharmaceutical Co., D.Puerto Rico 2011, 775 F.Supp.2d 349. Federal Courts 2564](#)

Considerations of judicial economy, convenience, and fairness necessitated dismissing arrestee's battery claim for lack of substantial federal question after summary judgment was granted in favor of trooper on federal claim. [Pride v. Kansas Highway Patrol, D.Kan.1992, 793 F.Supp. 279, affirmed 997 F.2d 712. Federal Courts 2564](#)

Where district court resolved all of plaintiffs' federal law claims challenging railroad trestle bridge project on summary judgment against plaintiffs, remaining claims arising under various laws of state were properly left to tribunals of state to adjudicate. [Gerosa Inc. v. Dole, S.D.N.Y.1983, 576 F.Supp. 344. Federal Courts 2564](#)

Although federal court had granted summary judgment for defendant on federal claim, where claims were based on similar set of operative facts court would retain jurisdiction over nonfederal claim. [Rogers v. Valentine, S.D.N.Y.1964, 37 F.R.D. 231. Federal Courts 2564](#)

---- **Subject matter jurisdiction, jurisdiction of district court, practice and procedure**

On defendants' motion for summary judgment in removed state-court action brought by former employee of federally insured Michigan-chartered credit union against the National Credit Union Administration Board in which he sought to modify his arbitration award against the defunct credit union by making the Board liable on it, the district court, upon finding that, under the Federal Credit Union Act (FCUA), it lacked jurisdiction over any claim for payment from the credit union's assets, such as that raised by former employee, should have dismissed the suit for lack of subject-matter jurisdiction, not granted summary judgment to defendants, though because the district court's labeling error was harmless, its judgment could be modified by the Court of Appeals to clarify its nature and, as modified,

affirmed. [Perna v. Health One Credit Union, C.A.6 \(Mich.\) 2020, 983 F.3d 258](#), rehearing en banc denied, certiorari denied [141 S.Ct. 2861, 210 L.Ed.2d 965](#). [Removal of Cases](#) 📌 108; [Removal of Cases](#) 📌 115; [Removal of Cases](#) 📌 119

Parties, practice and procedure

Summary judgment had no effect as to party who neither had been served nor had voluntarily appeared at time that summary judgment motion was filed and decided, and thus was not party to suit at that time. [Waters v. Farmers Texas County Mut. Ins. Co., C.A.5 \(Tex.\) 1993, 9 F.3d 397](#). [Federal Civil Procedure](#) 📌 2576

Arizona noteholders who had made purchases through investment agents could prove through review of documents submitted for in camera inspection at summary judgment stage that they had authorized their counsel to file suit. [In re National Century Financial Enterprises, Inc., Inv. Litigation, S.D.Ohio 2010, 755 F.Supp.2d 857](#). [Summary Judgment](#) 📌 119

Pro se parties, practice and procedure--Generally

Because the process of summary judgment is not obvious to a layman, the district court must ensure that a pro se plaintiff understands the nature, consequences, and obligations of summary judgment. [Ceslik v. Miller Ford, Inc., D.Conn.2008, 584 F.Supp.2d 433](#). [Summary Judgment](#) 📌 291

For purpose of summary judgment proceeding, submissions of a pro se litigant must be construed liberally and interpreted to raise the strongest arguments that they suggest. [Ryder v. Washington Mut. Bank, F.A., D.Conn.2007, 501 F.Supp.2d 311](#). [Summary Judgment](#) 📌 291

That a party appears pro se, though entitled to some latitude not accorded to litigants represented by counsel, does not relieve him of the obligation to respond to a motion for summary judgment with sufficient admissible evidence. [Hamlett v. Srivastava, S.D.N.Y.2007, 496 F.Supp.2d 325](#). [Summary Judgment](#) 📌 291

Under the law, if a pro se litigant wishes to controvert the moving party's statements of material fact, in a summary judgment proceeding, the pro se litigant is required to respond. [Demmons v. Tritch, D.Me.2007, 484 F.Supp.2d 177](#). [Summary Judgment](#) 📌 291

Proceeding pro se does not otherwise relieve litigant of the usual requirements of summary judgment, and pro se party's bald assertions, unsupported by evidence, are insufficient to overcome motion for summary judgment. [Crenshaw v. Herbert, W.D.N.Y.2006, 445 F.Supp.2d 301](#). [Summary Judgment](#) 📌 291

Although the same standards apply when a pro se litigant is involved, the pro se litigant should be given special latitude in responding to a summary judgment motion. [Brown v. Selwin, S.D.N.Y.1999, 250 F.Supp.2d 299](#), affirmed [29 Fed.Appx. 762, 2002 WL 355901](#). [Summary Judgment](#) 📌 291

Pro se plaintiff who failed to comply with requirements of federal and local summary judgment rules would be allowed to submit affidavits and additional material, despite fact that normally plaintiff's failure to comply with rules would require federal court to grant defendants' summary judgment motion; pro se plaintiff would be given special latitude in responding to summary judgment motion. [Gonzalez v. Long, E.D.N.Y.1995, 889 F.Supp. 639](#). [Summary Judgment](#) 📌 291

Even pro se litigant is not excused from requirements of this rule governing summary judgment. [Frito-Lay of Puerto Rico, Inc. v. Canas, D.C.Puerto Rico 1981, 92 F.R.D. 384](#). [Summary Judgment](#) 📌 291

---- Prisons and prisoners, pro se parties, practice and procedure

District court erred when it sua sponte granted summary judgment on state inmate's deprivation-of-property due process claim against prison officials and correctional officers, where defendants' blanket request for "complete summary judgment on all claims," including inmate's due process claims, was insufficient to give notice to inmate, who was proceeding pro se, that his property claim was at risk. [Hoard v. Hartman, C.A.9 \(Or.\) 2018, 904 F.3d 780](#). [Summary Judgment](#) 📌 280

In resolving pro se prisoners' cases on defense motions for summary judgment, central consideration should be whether claims of prisoners have had fair and meaningful consideration. Yusuf Asad [Madyun v. Thompson, C.A.7 \(Ill.\) 1981, 657 F.2d 868. Summary Judgment](#) 🏠 101

Requirements of this rule may not fairly be applied with strict literalness to prisoner unrepresented by counsel and subject to handicaps that detention necessarily imposes. [Hudson v. Hardy, C.A.D.C.1968, 412 F.2d 1091, 134 U.S.App.D.C. 44, on rehearing 424 F.2d 854, 137 U.S.App.D.C. 366. Civil Rights](#) 🏠 1429; [Summary Judgment](#) 🏠 116

District court would consider requester's response to Department of Justice's (DOJ) motion for summary judgment, in requester's action alleging failure to provide records in response to his Freedom of Information Act (FOIA) and Privacy Act request, even though response was filed two weeks after court-imposed deadline, without formal motion to late file; requester, who was pro se and incarcerated, provided reasonable explanation for delay in filing response, delay was short, there was no evidence of bad faith, and there was no prejudice to DOJ. [Emery v. United States Department of Justice, D.D.C.2022, 639 F.Supp.3d 87. Summary Judgment](#) 🏠 284

It was responsibility of pro se inmate plaintiff who was moved to different prison facility to inform court of his whereabouts, and where good faith efforts had been made to locate plaintiff without success, court would proceed in his absence to rule on defense motion for summary judgment in his civil rights action. [Harrison v. Johnson, E.D.N.C.1993, 830 F.Supp. 866. Summary Judgment](#) 🏠 291; [Summary Judgment](#) 🏠 341

Court must be especially hesitant before employing summary judgment against an incarcerated party, who is limited in his ability to collect evidence supporting his claim. [Howard v. Cherish, S.D.N.Y.1983, 575 F.Supp. 34. Summary Judgment](#) 🏠 116

In order to insure fair and meaningful consideration of pro se claims of prisoners, courts are cautious in resolving their cases through summary judgment, but this caution has not resulted in per se rule that automatically forecloses summary judgment against a pro se prisoner, but, rather, courts examine circumstances of each case to determine whether claims have received fair and meaningful consideration, and factors considered in making this determination are prisoner's access to proof, his understanding of legal issues involved, his ability to express himself, and nature of his claim. [Madyun v. Thompson, C.D.Ill.1980, 484 F.Supp. 619, vacated on other grounds 657 F.2d 868. Federal Civil Procedure](#) 🏠 2491.5

Special indulgence is required in considering pro se complaints of prisoners, but summary judgments will nonetheless be granted where warranted. [Carter v. Cuyler, E.D.Pa.1976, 415 F.Supp. 852. Federal Civil Procedure](#) 🏠 657.5(3)

Persons entitled to contest summary judgment, practice and procedure

District court abused its discretion by applying pleading standard instead of summary-judgment standard, notwithstanding completion of discovery, to resolve issue of pedestrians' Article III standing, which city raised at summary-judgment stage, in pedestrians' action alleging city violated ADA and Rehabilitation Act by failing to keep sidewalks and crosswalks accessible; district court's decision, which resembled reverse conversion to motion to dismiss, largely ignored summary-judgment record and failed to consider whether evidence outside pleadings might have sufficed establish pedestrians' standing, and had city objected to adequacy of pedestrians' pleadings earlier in litigation, any deficiencies presumably could have been cured before allotted time to amend pleadings expired. [Lugo v. City of Troy, New York, C.A.2 \(N.Y.\) 2024, 114 F.4th 80. Summary Judgment](#) 🏠 111

In city's discriminatory lending action against mortgage lender, though district court's scheduling order limited discovery and merits issues to be considered on summary judgment to narrow issue of loans made during Fair Housing Act's two-year limitation period, city did not show that it would be unfair to require it to establish standing under standard ordinarily applicable at summary judgment, as opposed to more lenient standard; court's order was silent on whether other threshold issues such as standing would be deferred until later date, city's standing was in dispute and actively litigated, legal effect of order was not to bar parties from raising jurisdictional issues on summary judgment, as reading order in such way unreasonably imputed to court a disregard of its basic obligation

to satisfy itself of its own jurisdiction before resolving any merits issue, and city did not advise court of need for additional discovery to support standing. [City of Miami Gardens v. Wells Fargo & Co., C.A.11 \(Fla.\) 2019, 931 F.3d 1274](#), rehearing en banc denied [956 F.3d 1319](#), certiorari denied [141 S.Ct. 1125](#), [208 L.Ed.2d 563](#). [Federal Civil Procedure](#) 📖 1939; [Summary Judgment](#) 📖 111; [Summary Judgment](#) 📖 344

Parachute manufacturer had standing to contest grant of second manufacturer's motion for summary judgment in products liability action where parachute manufacturer was party at time summary judgment was entered, court concluded harness and pack worn by plaintiff at time of accident was not manufactured by second manufacturer but by parachute manufacturer and thus parachute manufacturer could no longer contest liability for manufacturer, and, in grant of summary judgment, parachute manufacturer's cross claim for indemnification against second manufacturer was dismissed with prejudice. [Hoover v. Switlik Parachute Co., C.A.9 \(Cal.\) 1981, 663 F.2d 964](#). [Federal Courts](#) 📖 3255

Plaintiff homeowners, who brought action against developer, contractor, architect, and structural engineer, asserting claims arising out of the renovation of their vacation home, had no standing to oppose subcontractor's motion for summary judgment and for dismissal of third-party claims and cross-claims asserted against it. [Aktas v. JMC Development Co., Inc., N.D.N.Y.2012, 877 F.Supp.2d 1](#), affirmed [563 Fed.Appx. 79, 2014 WL 1613041](#). [Summary Judgment](#) 📖 283

Transportation services provider failed to show that it was, or had in the past, engaged in business of interstate transportation using its vehicles capable of transporting at least nine passengers, as required for provider to establish, at summary judgment stage of action against regional airport authority and metropolitan government, its standing to sue for damages for alleged violations of its rights under federal statute that barred state governments from enacting regulations related to scheduling of interstate or intrastate transportation provided by federally regulated motor carrier of passengers on interstate route; provider offered no business records, affidavits, or testimony affirming that its three large vehicles left state. [Executive Transp System LLC v. Louisville Regional Airport Authority, W.D.Ky.2010, 678 F.Supp.2d 498](#). [Automobiles](#) 📖 127; [Aviation](#) 📖 464

Under the Uniform Contribution Among Tortfeasors Act (UCATA) and Hawaii civil procedure rule governing amendments to conform to the evidence, co-defendants in negligence suit, who were also cross-defendants, but not cross-claimants, could oppose another co-defendant's motion for summary judgment when plaintiff choose not to oppose the motion; to deny cross-defendants the right to oppose motion would unfairly deprive them of the right to contribution by a joint tortfeasor if the issue of apportionment of damages arose in the future, especially in the absence of any objection or showing of surprise. [White v. Sabatino, D.Hawai'i 2006, 415 F.Supp.2d 1163](#), reconsideration denied [424 F.Supp.2d 1271](#). [Summary Judgment](#) 📖 283

On motion for summary judgment, issue of standing may be raised. [Guarino v. Sun Co., Inc., D.N.J.1993, 819 F.Supp. 405, 27 U.S.P.Q.2d 1545](#), affirmed [11 F.3d 1163, 124 A.L.R. Fed. 729, 28 U.S.P.Q.2d 1881](#), rehearing denied. [Summary Judgment](#) 📖 32

Intervention, practice and procedure

If intervenor could demonstrate right to relief so clearly that there was no genuine issue of material fact, summary judgment in her favor could be properly granted. [Lundeen v. Cordner, C.A.8 \(Minn.\) 1966, 354 F.2d 401](#), motion denied [356 F.2d 169](#). [Summary Judgment](#) 📖 45(1)

In action to recover the value of machinery for deterioration thereof, which had come into the defendants' possession by a writ of attachment in another suit, where terms of agreement made in such other suit between plaintiff and an intervenor, in light of accompanying circumstances afforded no basis for a holding as a matter of law, that a purpose of intervenor in obtaining a promise of plaintiff not to take judgment in such other suit in excess of a certain amount or to collect it except in a certain manner, if the intervenor would dismiss petition of intervention had been to make defendants a donee beneficiary of the plaintiff's obligation, entry of summary judgment for defendant was error as matter of law. [Johnson Farm Equipment Co. v. Cook, C.A.8 \(Iowa\) 1956, 230 F.2d 119](#). [Summary Judgment](#) 📖 241; [Torts](#) 📖 454

A plaintiff's right to summary judgment against intervenor depends upon whether intervenor's answer to the complaint raises any disputed issue of fact. [Raylite Elec. Corp. v. Noma Elec. Corp., C.A.2 \(N.Y.\) 1948, 170 F.2d 914, 79 U.S.P.Q. 362. Summary Judgment](#) 🗝️ 43

One-way intervention rule, barring pre-certification motions for summary judgment in class actions, did not apply to employee's motion for partial summary judgment on claim under California Private Attorney Generals Act (PAGA) in class action against retailer arising from retailer's alleged violations of Act based on its practices in payment of overtime wages and recording of hours, hourly rates, and start and end dates for pay statements, where the District Court had already granted class certification, mailed multiple rounds of opt-out notices to class members, which had opt-out deadlines of 45 days after mailing, which had already passed, meaning that members had decided whether or not to participate, and a summary judgment order would bind both retailer and the class. [Magadia v. Wal-Mart Associates, Inc., N.D.Cal.2018, 319 F.Supp.3d 1180. Summary Judgment](#) 🗝️ 275

Insurer's interest in resolving coverage obligations before advancing attorney's fees for insureds would not be impaired by resolution of parties' summary judgment motions as required for intervention as of right at summary judgment stage of federal government's action seeking damages against insureds who sold active-duty servicemembers' vehicles at auction without court order in violation of Servicemembers Civil Relief Act (SCRA), where insurer had already advanced attorney's fees and costs in pursuing motions, which had been fully briefed and were ripe for decision. [U.S. v. B.C. Enterprises, Inc., E.D.Va.2009, 667 F.Supp.2d 650. Federal Civil Procedure](#) 🗝️ 340

Where intervenors' papers did not allege facts which controverted those stated by plaintiffs and defendants but, rather, merely asserted that factual questions existed and challenged legal conclusions to be drawn from facts whose truth was not and could not be challenged, intervenors' papers raised legal issues only, which appropriately should be denied on a motion for summary judgment. [Kirkland v. New York State Dept. of Correctional Services, S.D.N.Y.1980, 482 F.Supp. 1179, affirmed 628 F.2d 796, certiorari denied 101 S.Ct. 1515, 450 U.S. 980, 67 L.Ed.2d 815. Summary Judgment](#) 🗝️ 13

Court would not amend an agreed order among the parties, which provided plaintiff intervenors were to file affidavits in support of their summary judgment motions on or before May 15, to set that date as deadline for filing of all evidentiary materials in support of summary judgment, as such limitation would be unfair to plaintiff intervenors, who might have wished to submit evidentiary materials in their reply to defendants' responsive memorandum, and such a cutoff date would have been contrary to rule providing that court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories or further affidavits. [Smith v. Board of Election Com'rs for City of Chicago, N.D.Ill.1984, 103 F.R.D. 161. Stipulations](#) 🗝️ 13

Third-party defendants, practice and procedure

Where party did not join in another party's motion for summary judgment, nor did such party file motion for summary judgment in his own behalf, it was error to enter summary judgment in favor of such party. [Matter of Hailey, C.A.5 \(Miss.\) 1980, 621 F.2d 169. Summary Judgment](#) 🗝️ 354

Third-party defendant may resist plaintiff's motion for summary judgment to same extent as defendant, but he is in no better position than defendant so that duty to respond to a showing in support of motion for summary judgment is applicable to him as though he were the defendant. [F & D Property Co. v. Alkire, C.A.10 \(Colo.\) 1967, 385 F.2d 97. Summary Judgment](#) 🗝️ 77

Where there was no genuine issue as to any material fact in third-party action, summary judgment was proper vehicle for determination of case. [Norfolk & W. Ry. Co. v. Anderson's-Black Rock Inc., C.A.4 \(W.Va.\) 1965, 350 F.2d 917. Summary Judgment](#) 🗝️ 45(1)

In action against insurer on brokers blanket bond which provided coverage for losses through fraudulent conduct by plaintiff's employees for loss sustained as result of stock manipulations and conspiracy by three third-party defendants, wherein insurer claimed that loss was excluded under provision exempting coverage for losses resulting from statutory violation, the conduct of one third-party defendant under the affidavits, etc., showed that material issue of fact existed as to third-party defendant's alleged fraud, on issue whether

third-party defendant was entitled to summary judgment. [Sears, Roebuck & Co. v. Insurance Co. of North America](#), N.D.Ill.1974, 392 F.Supp. 398. [Summary Judgment](#) 📌 316

Third-party defendant was entitled to summary judgment on third-party complaint, where collateral agreements on which third-party claim in the main was based were without consideration and unenforceable, and there was no genuine issue as to any material fact between the parties. [Associates Discount Corp. v. Southern Equipment Sales, Inc.](#), S.D.Miss.1962, 223 F.Supp. 837. [Summary Judgment](#) 📌 123

Motion for summary judgment of third-party defendant in action by government against guarantor for amounts allegedly due on the guaranty would be denied where the guaranty was an absolute guaranty of payment. [U. S. v. Shirman](#), N.D.Ill.1966, 41 F.R.D. 368. [Guaranty](#) 📌 92(1); [Summary Judgment](#) 📌 157

Merits of claim, practice and procedure

Merits of claim are considered in determining motion for summary judgment, but only procedural matters which do not prejudice merits are considered in determining motion to dismiss. [Local 4076, United Steelworkers of America v. United Steelworkers of America, AFL-CIO](#), W.D.Pa.1971, 327 F.Supp. 1400. [Federal Civil Procedure](#) 📌 1832; [Summary Judgment](#) 📌 273

Removal of cases, practice and procedure

In a suit originally brought in state court by one bank against another bank to collect on a demand promissory note, in which Federal Deposit Insurance Corporation intervened as plaintiff after it had purchased assets of plaintiff bank, state court's denial of Corporation's summary judgment motion which was based upon § 1823(e) of Title 12 which invalidates certain agreements which tend to diminish or defeat the right of the Corporation in certain assets did not foreclose Corporation from again relying on that ground in a summary judgment motion presented in federal court following removal, since state trial court had not entered final order or judgment in the matter and could have reexamined its opinion at any time, and since district court was not bound by state court's resolution of federal law. [Federal Deposit Ins. Corp. v. First Mortg. Investors](#), E.D.Wis.1980, 485 F.Supp. 445. [Federal Courts](#) 📌 3013; [Removal Of Cases](#) 📌 114

Where there were contested issues of fact in action, which had been removed from New York state court to federal district court in New York, New York resident's motion for summary judgment would be denied. [B. B. Weit Printing Co. v. Frances Denney, Inc.](#), S.D.N.Y.1969, 300 F.Supp. 405. [Summary Judgment](#) 📌 101

Where motion for summary judgment in lieu of complaint in action on guarantee had been filed in state court prior to removal, federal court was entitled to consider motion for summary judgment even though no complaint was filed. [Istituto Per Lo Sviluppo Economico Dell' Italia Meridionale v. Sperti Products, Inc.](#), S.D.N.Y.1969, 47 F.R.D. 310. [Removal Of Cases](#) 📌 114

Retention of action, practice and procedure

District court would retain supplemental jurisdiction over telephone answering services provider's remaining state-law claims after granting summary judgment for telephone local exchange carrier (LEC) and carrier's corporate parent on provider's federal claims and on some of provider's state-law claims, in light of current duration of lawsuit and imminent trial. [Anserphone, Inc. v. Bell Atlantic Corp.](#), W.D.Pa.1996, 955 F.Supp. 418. [Federal Courts](#) 📌 2564

Compliance with procedure, practice and procedure

Denial of summary judgment motion by operator of limestone mine due to its initial noncompliance with summary judgment rule that required separate statement of undisputed facts was not warranted, in adjacent property owner's action seeking to hold operator responsible for some reclamation costs arising under CERCLA in connection with limestone tailings from mine that had been dumped on owner's property by previous operator of zinc and lead mine, since purpose of rule was to ensure that party filing for summary judgment provided notice of purportedly undisputed facts, and owner had notice of operator's factual contentions, in that operator's later-filed supplement included statements from its brief without changes to citations or wording. [Dixon Lumber Company, Incorporated v. Austinville Limestone Company, Inc.](#), W.D.Va.2017, 256 F.Supp.3d 658. [Summary Judgment](#) 📌 289; [Summary Judgment](#) 📌 290

Consolidation, practice and procedure

Different postures of cases contesting warning labels for cigar and pipe tobacco products and assessment of user fees on cigar and pipe tobacco products did not prevent consolidation; although portion of one case had been resolved and certain rulings were on appeal, and other case, though fully briefed for summary judgment, remained unresolved on the merits, both cases involved cross-motions for summary judgment largely on administrative record, and there was no real gain or loss of efficiency by consolidating matters, as opposed to keeping them on separate tracks. [En Fuego Tobacco Shop LLC v. United States Food and Drug Administration](#), D.D.C.2019, 356 F.Supp.3d 1. [Antitrust and Trade Regulation](#) 📌 236

Where same series of occurrences giving rise to action by parolee, whose parole was revoked, for injunctive relief against execution and enforcement of statute pertaining to revocation of parole, mandamus to compel his prosecution for operating motor vehicle without license and for compensatory and punitive damages, also gave rise to six other suits in same court by parolee and six more in other courts against same or similarly situated state officials, defendants' motions, in action in question, to dismiss complaint and for summary judgment would be denied, in light of belief that defendants should move for consolidation before pursuing summary procedure. [Lombardi v. Regan](#), S.D.N.Y.1972, 341 F.Supp. 718. [Federal Civil Procedure](#) 📌 1827.1; [Summary Judgment](#) 📌 351

In view of court's prior orders consolidating actions for all purposes, designating particular firm as lead counsel for all plaintiffs in the action as consolidated, and directing that all pleadings, papers and notices of any kind be served by or upon defendants only by or upon the designated lead counsel, summary judgment motion of individual attorney on behalf of two plaintiffs was in violation of the aforementioned orders, and said attorney would be restrained and prohibited from taking any further action in violation of said orders. [Percodani v. Riker-Maxson Corp.](#), S.D.N.Y.1970, 51 F.R.D. 263, affirmed 442 F.2d 457. [Attorneys And Legal Services](#) 📌 211; [Federal Civil Procedure](#) 📌 8

Cross motions, practice and procedure--Generally

Under certain, rare circumstances, cross-motions for summary judgment can be converted into a bench-trial-like situation. [In re United Air Lines, Inc.](#), C.A.7 (Ill.) 2006, 453 F.3d 463. [Summary Judgment](#) 📌 279

As a general rule, filing by both parties of opposing motions for summary judgment will not warrant court's granting either party's motion if indeed there exists a genuine factual dispute concerning a material issue; however, when parties proceed on same legal theory and on same material facts, basis for rule disappears. [Schlytter v. Baker](#), C.A.5 (Fla.) 1978, 580 F.2d 848. [Summary Judgment](#) 📌 279

Summary judgment is not substitute for trial, and in event that cross motions have been filed and material issues of fact remain, trial must be had. [Nafco Oil & Gas, Inc. v. Appleman](#), C.A.10 (Okla.) 1967, 380 F.2d 323. [Summary Judgment](#) 📌 1; [Summary Judgment](#) 📌 279

Cross-motions for summary judgment do not alter basic standard, but rather simply require court to determine whether either of the parties deserve judgment as a matter of law on facts that are not disputed. [Carmack v. National R.R. Passenger Corp.](#), D.Mass.2007, 486 F.Supp.2d 58. [Summary Judgment](#) 📌 279

The presence of cross-motions for summary judgment neither dilutes nor distorts the standard of review; instead, cross-motions require a court to decide whether either of the parties deserves judgment as a matter of law on facts that are not disputed. [Cariddi v. Consolidated Aluminum Corp.](#), D.Mass.2007, 478 F.Supp.2d 150. [Summary Judgment](#) 📌 279

Where motion for summary judgment is denied, and that motion is diametrically opposed by cross-motion for summary judgment, normally no analysis need be done to determine that the opposing cross motion must per force be granted. [Wasson v. Media General, Inc.](#), E.D.Va.2006, 446 F.Supp.2d 579. [Summary Judgment](#) 📌 279

In ruling on cross-motions for summary judgment, the court shall grant summary judgment only if one of the moving parties is entitled to judgment as a matter of law upon material facts that are not genuinely disputed. [American Cargo Transport, Inc. v. Natsios](#),

[D.D.C.2006, 429 F.Supp.2d 139](#), affirmed [222 Fed.Appx. 2, 2007 WL 1125833](#). [Summary Judgment](#) 🏠 279

Summary judgment standard is not altered by fact that cross-motions for summary judgment have been filed. [Locke v. Karass, D.Me.2006, 425 F.Supp.2d 137](#), affirmed [498 F.3d 49](#), certiorari granted [128 S.Ct. 1224, 552 U.S. 1178, 170 L.Ed.2d 57](#), affirmed [129 S.Ct. 798, 555 U.S. 207, 172 L.Ed.2d 552](#). [Summary Judgment](#) 🏠 279

Where judge would have task at trial of interpreting undisputed evidence in order to reach legal conclusion, court may turn cross-motions for summary judgment into "paper trial," and simply determine which party has prevailed in persuading court that it is entitled to judgment. [Wadsworth, Inc. v. Schwarz-Nin, D.Puerto Rico 1996, 951 F.Supp. 314](#). [Summary Judgment](#) 🏠 279

When cross-motions for summary judgment are filed on same material facts, court will grant summary judgment only when moving party is entitled to judgment as matter of law. [Dutmer v. City of San Antonio, Tex., W.D.Tex.1996, 937 F.Supp. 587](#). [Summary Judgment](#) 🏠 279

In ruling on cross motions for summary judgment, court must apply same standard as it does for individual summary judgment motions; thus, court must rule on each motion independently, deciding in each instance whether moving party has met its burden. [Creech v. N.D.T. Industries, Inc., D.S.C.1993, 815 F.Supp. 165](#). [Summary Judgment](#) 🏠 279

Granting of one motion for summary judgment does not necessarily warrant denial of other party's motion unless parties base their motions on same legal theories and same set of material facts. [Stewart v. Dollar Federal Sav. and Loan Ass'n, S.D.Ohio 1981, 523 F.Supp. 218](#). [Summary Judgment](#) 🏠 279

The same standard is applicable whether a motion for summary judgment is made by one party or whether cross motions are filed and the motion will not be granted unless one of the movants is entitled to judgment as a matter of law on facts that are not genuinely disputed. [Hayes v. City of Wilmington, D.C.Del.1978, 451 F.Supp. 696](#). [Summary Judgment](#) 🏠 45(2); [Summary Judgment](#) 🏠 279

On cross motions for summary judgment, court must determine whether one of parties is entitled to judgment as a matter of law based on undisputed facts. [In re Drexel Burnham Lambert Group, Inc., Bkrtcy.S.D.N.Y.1992, 138 B.R. 687](#). [Summary Judgment](#) 🏠 279

---- Duty of court, cross motions, practice and procedure

Fact that both sides have moved for summary judgment does not mean that court must grant judgment as matter of law for one side or the other; rather, court must evaluate each party's motion on its own merits, taking care in each instance to draw all reasonable inferences against party whose motion is under consideration. [Schwabebauer v. Board of Ed. of City School Dist. of City of Olean, C.A.2 \(N.Y.\) 1981, 667 F.2d 305](#), on remand. [Summary Judgment](#) 🏠 279

Filing of cross motions for summary judgment, both parties asserting that there are no uncontested issues of material fact, does not vitiate court's responsibility to determine whether disputed issues of material fact are present. [U. S. v. Fred A. Arnold, Inc., C.A.9 \(Cal.\) 1978, 573 F.2d 605](#). See, also, [Eby v. Reb Realty, Inc., C.A.Ariz.1974, 495 F.2d 646](#); [Allen v. Beneficial Finance Co., D.C.Ind.1975, 393 F.Supp. 1382](#), affirmed [531 F.2d 797](#), certiorari denied [97 S.Ct. 237, 429 U.S. 885, 50 L.Ed.2d 166](#). [Summary Judgment](#) 🏠 72; [Summary Judgment](#) 🏠 279

Where pleadings presented genuine issue regarding material facts but each party moved for a summary judgment, it was trial court's duty under this rule to specify in a finding the facts that appeared from the pleadings without substantial controversy, and to go forward with the trial in respect to those in dispute, and at close of trial upon disputed facts to make findings with respect to them and to make conclusions of law upon the whole case. [Associates Discount Corporation v. Crow, App.D.C.1940, 110 F.2d 126, 71 App.D.C. 336](#). [Summary Judgment](#) 🏠 355

Cross-motions for summary judgment do not alter basic standard of summary judgment rule, but rather simply require court to determine whether either of parties deserves judgment as matter of law on facts that are not disputed. [Brooks v. Halsted Communications, Ltd., D.Mass.2009, 620 F.Supp.2d 193](#). [Summary Judgment](#) 🏠 279

Where both parties have moved for summary judgment, both motions must be considered separately, as each movant bears the burden of establishing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. [U.S. v. Viking Resources, Inc., S.D.Tex.2009, 607 F.Supp.2d 808. Summary Judgment](#) 📌 279

In considering cross motions for summary judgment the district court is not permitted to weigh the evidence presented or attempt to resolve conflicts therein. [Scarboro v. Travelers Ins. Co., E.D.Tenn.1980, 91 F.R.D. 21. Summary Judgment](#) 📌 96; [Summary Judgment](#) 📌 279

Cross motions for summary judgment do not require the court to decide the case on those motions; court can deny both motions if both parties have failed to meet the burden of establishing that no genuine issue of material fact exists and that they are entitled to judgment as a matter of law. [Matter of Martin, Bkrcty.N.D.Ill.1991, 130 B.R. 930. Summary Judgment](#) 📌 279

--- Treatment of motions, cross motions, practice and procedure

On cross-motions for summary judgment, the court will consider each party's evidentiary showing, regardless of which motion the evidence was tendered under. [Oakley, Inc. v. Nike, Inc., C.D.Cal.2013, 988 F.Supp.2d 1130. Summary Judgment](#) 📌 279

Cross-motions for summary judgment do not automatically empower court to dispense with determination of whether questions of material fact exist; rather, court must evaluate each party's motion on its own merits, taking care in each instance to draw all reasonable inferences against party whose motion is under consideration. [Bryant v. Better Business Bureau of Greater Maryland, Inc., D.Md.1996, 923 F.Supp. 720. Summary Judgment](#) 📌 279

Although no formal cross motion for summary judgment was filed on behalf of plaintiff, court could proceed, on defendants' motion for summary judgment, as though a cross motion for summary judgment for plaintiffs had been filed. [Stewart v. Jozwiak, E.D.Wis.1975, 399 F.Supp. 574. Summary Judgment](#) 📌 279

Where both parties and court agreed that no facts were in dispute and where defendant was not entitled to summary judgment, case would be treated as though plaintiff had filed cross motion for summary judgment. [Inter-State Milk Producers' Cooperative v. Butz, E.D.Pa.1974, 372 F.Supp. 1010. Summary Judgment](#) 📌 279

In federal question litigation involving small claim, and in which plaintiff was not represented by counsel, plaintiff would be allowed to submit her version of facts under oath and to attach whatever documents she believed could support her claim in response to defendant's motion to dismiss, and court would treat whatever submissions were made by parties as cross motions for summary judgment. [Dickman v. F.D.R. VA Hosp., S.D.N.Y.1993, 148 F.R.D. 513. Federal Civil Procedure](#) 📌 1832; [Summary Judgment](#) 📌 279

--- Admissions, cross motions, practice and procedure

Cross-motions for summary judgment do not constitute admissions that no genuine issues of material fact remain; rather, each party carries the burden on its own motion to show entitlement to judgment as a matter of law after demonstrating the absence of any genuine disputes over material facts. [Western Management, Inc. v. U.S., Fed.Cl.2011, 97 Fed.Cl. 29, affirmed 441 Fed.Appx. 772, 2011 WL 6157387. United States](#) 📌 1061(3)

When a plaintiff neither opposes the factual claims made in a defendant's motion for summary judgment nor specifically challenges the defendant's statement of undisputed facts, but instead files a cross-motion for summary judgment claiming that the undisputed facts entitled him to summary judgment, summary judgment in the defendant's favor is appropriate; by failing specifically to challenge the facts identified in the defendant's statement of undisputed facts, the plaintiff is deemed to have admitted the validity of the facts contained in the statement. [Clearmeadow Investments, LLC v. U.S., Fed.Cl.2009, 87 Fed.Cl. 509. United States](#) 📌 1061(3)

--- Agreement, cross motions, practice and procedure

Generally, cross motions for summary judgment do not constitute an agreement that if one is rejected the other is warranted. [Newark Morning Ledger Co. v. U. S., C.A.3 \(N.J.\) 1976, 539 F.2d 929. Summary Judgment](#) 📌 279

Cross motions for summary judgment are no more than a claim by each side that it alone is entitled to summary judgment, and making of such inherently contradictory claims does not constitute an agreement that if one is rejected the other is necessarily justified or that the losing party waives judicial consideration and determination of whether genuine issues of material fact exist. [Rains v. Cascade Industries, Inc., C.A.3 \(N.J.\) 1968, 402 F.2d 241, 159 U.S.P.Q. 322. Summary Judgment 🏹 279](#)

When parties file cross-motions for summary judgment, the making of such inherently contradictory claims does not constitute an agreement that if one is rejected the other is necessarily justified or that the losing party waives judicial consideration and determination whether genuine issues of material fact exist. [Musarra v. Digital Dish, Inc., S.D.Ohio 2006, 454 F.Supp.2d 692. Summary Judgment 🏹 279](#)

Cross-motions for summary judgment are merely claims by each side that it alone is entitled to summary judgment; they do not constitute an agreement that if one is denied the other is necessarily granted, or that the losing party waives judicial consideration and determination of whether genuine issues of material fact exist. [Canal Ins. Co. v. Sherman, E.D.Pa.2006, 430 F.Supp.2d 478. Summary Judgment 🏹 279](#)

Mere fact that both parties insist, by cross-motions for summary judgment, that no material issues of fact exist does not establish that trial is unnecessary; cross-motions are no more than claim by each side that it alone is entitled to summary judgment, and making of such inherently contradictory claims does not constitute agreement that if one is rejected the other is necessarily justified. [Johnson v. U.S., D.Conn.1996, 927 F.Supp. 36, affirmed 123 F.3d 700. Summary Judgment 🏹 279](#)

---- Case stated, cross motions, practice and procedure

Under "case stated" procedure, whenever cross-motions for summary judgment reveal that relevant facts appear without significant dispute, courtroom deputy clerk offers parties to treat case as case stated, and should they accept, court treats undisputed facts as established record and draws reasonable inferences therefrom without necessity of drawing adverse inferences against each moving party; facts of case being established, court affords each party thirty minutes for final argument, rather than the usual ten minutes per party when hearing argument on motion, and in due course enters required findings and rulings. [J.A. v. East Ramapo Cent. School Dist., S.D.N.Y.2009, 603 F.Supp.2d 684. Summary Judgment 🏹 94; Summary Judgment 🏹 279](#)

---- Discovery, cross motions, practice and procedure

District court did not abuse its discretion by ruling on parties' cross-motions for summary judgment in action brought pursuant to False Claims Act (FCA) two business days after defendant was ordered to produce four wrongly withheld documents, where relator had many opportunities to explain to district court effect that allegedly outstanding discovery might have had on motions for summary judgment, but failed to do so. [Urquilla-Diaz v. Kaplan University, C.A.11 \(Fla.\) 2015, 780 F.3d 1039, on remand 2017 WL 2992197. Summary Judgment 🏹 345](#)

---- Evidence considered, cross motions, practice and procedure

District court's consideration of preponderance of evidence in ruling on cross motions for summary judgment was erroneous. [U. S. v. Articles of Device Consisting of Three Devices . . . "Diapulse", C.A.6 \(Ky.\) 1976, 527 F.2d 1008, rehearing denied 532 F.2d 1056. Summary Judgment 🏹 304](#)

Where both parties were before court on cross motion for summary judgment, based upon agreed facts as supported by exhibits, court could not be precluded by technicality from referring to exhibits for such light as they might shed upon contentions of parties. [Heers v. U.S., Ct.Cl.1964, 357 F.2d 344, 165 Ct.Cl. 294. Federal Courts 🏹 2914](#)

On cross motions for summary judgment, defendants' motion accompanied by memorandum would be considered as disposing of issues not considered in plaintiffs' memorandum. [National Forest Preservation Group v. Volpe, D.C.Mont.1972, 352 F.Supp. 123, motion denied 359 F.Supp. 136. Summary Judgment 🏹 279; Summary Judgment 🏹 290](#)

---- Favorable view of opposition to motion, cross motions, practice and procedure

On cross-motions for summary judgment, the District Court examines each party's motion independently, viewing the evidence and inferences in the light most favorable to the nonmoving party. [Abate v. Hartford, E.D.Tex.2006, 471 F.Supp.2d 724. Summary Judgment 279](#)

On cross-motions for summary judgment, court evaluates each party's motion separately and on its own merits, resolving factual uncertainties and drawing all reasonable inferences against the party whose motion is under consideration. [Patrick Schaumburg Automobiles, Inc. v. Hanover Ins. Co., N.D.Ill.2006, 452 F.Supp.2d 857. Summary Judgment 75; Summary Judgment 279](#)

On cross-motions for summary judgment, the District Court is bound to view the evidence in the light most favorable to the non-moving party with respect to each motion, and adherence to this directive may require two statements of the "facts" of the same case and may counsel separate opinions on the respective motions. [Kapp v. Norfolk Southern Ry Co., M.D.Pa.2004, 350 F.Supp.2d 597. Summary Judgment 75; Summary Judgment 279](#)

Where both parties had brought motions for summary judgment, district court was required to evaluate each side's motion on its own merits, in each instance drawing all inferences in favor of nonmoving party. [Cuomo v. Barr, N.D.N.Y.1993, 812 F.Supp. 324, appeal dismissed 7 F.3d 17. Summary Judgment 279](#)

---- Grounds for judgment, cross motions, practice and procedure

Summary judgment may be entered on parties' cross motions for summary judgment on grounds other than those urged by parties, provided that parties have adequate opportunity to argue and present evidence on that particular ground, and that summary judgment is otherwise appropriate. [Federal Sav. and Loan Ins. Corp. v. Heidrick, D.Md.1991, 774 F.Supp. 352, on reconsideration 812 F.Supp. 586, affirmed 995 F.2d 471, as amended. Summary Judgment 279](#)

---- Genuine issues of fact, cross motions, practice and procedure

Factual issues sufficient to preclude disposition of a case on cross motions for summary judgment cannot be spontaneously generated by a district court's opinion; if no issues of material fact are created by the clash of affidavits and other materials submitted by the parties in support of their motions, then, for purposes of this rule, there is no genuine issue as to any material fact. [Central Oil & Supply Corp. v. U. S., C.A.5 \(La.\) 1977, 557 F.2d 511, rehearing denied 562 F.2d 1257, rehearing denied 562 F.2d 1258. Summary Judgment 45\(1\)](#)

On cross-motions for summary judgment, each side must still establish that no genuine issue of fact exists and that it is entitled to judgment as matter of law. [Sterling v. Southeastern Pennsylvania Transp. Authority, E.D.Pa.1996, 926 F.Supp. 65. Summary Judgment 279](#)

Cross motions for summary judgment do not automatically empower court to dispense with determination of whether questions of material fact exist; rather, court must evaluate each party's motion on its own merits, taking care in each instance to draw all reasonable inferences against party whose motion is under consideration. [Strauss v. Peninsula Regional Medical Center, D.Md.1996, 916 F.Supp. 528. Summary Judgment 279](#)

Fact that both parties argue for summary judgment does not indicate that there are no genuine issues of material fact; the court must rule on each motion separately, in determining as to each whether judgment may be entered in accordance with applicable principles. [District 12, United Mine Workers of America v. Peabody Coal Co., S.D.Ill.1985, 602 F.Supp. 240. Summary Judgment 279](#)

When each side seeks summary judgment, that does not by itself indicate that there are no genuine issues of material fact; rather, court must rule on each motion separately, applying applicable standards, in determining whether summary judgment would be appropriate. [In re Allen, Bkrcty.N.D.Ill.1994, 183 B.R. 519. Summary Judgment 279](#)

---- Necessity of grant of judgment, cross motions, practice and procedure

Even though both sides have cross-moved for summary judgment, neither motion may be granted unless one party is entitled to it as a matter of law upon genuinely undisputed facts. [Rhoads v. McFerran, C.A.2 \(N.Y.\) 1975, 517 F.2d 66. Summary Judgment 279](#)

Court will not automatically decide case at summary judgment stage merely because parties have filed cross-motions for summary judgment. [CertainTeed Corp. v. Employers Ins. of Wausau, D.Kan.1996, 939 F.Supp. 826. Summary Judgment](#) 📌 279

Filing of cross motions for summary judgment by parties does not empower trial court to decide genuine issues of material fact; trial court is not required to grant summary judgment in favor of one party or other simply because cross motions have been filed since genuine issues of material fact may still exist. [Anthes v. Transworld Systems, Inc., D.Del.1991, 765 F.Supp. 162. Summary Judgment](#) 📌 279

The mere filing of cross motions for summary judgment does not empower court to grant summary judgment unless one moving party is entitled to judgment as a matter of law on the basis of material facts not in dispute. [Brown v. Tru-Lite, Inc., W.D.La.1975, 398 F.Supp. 800. See, also, Frouge Corp. v. Chase Manhattan Bank \(Nat. Ass'n\), D.C.N.Y.1976, 426 F.Supp. 794. Summary Judgment](#) 📌 279

Cross motions for summary judgment do not require court to decide case on those motions; court can deny both motions if both parties fail to meet their burden. [In re Superior Toy & Mfg. Co., Inc., Bkrcty.N.D.Ill.1995, 183 B.R. 826. Bankruptcy](#) 📌 2164.1; [Summary Judgment](#) 📌 279

Cross motions for summary judgment do not warrant granting summary judgment unless one of moving parties is entitled to judgment as matter of law upon facts that are not genuinely disputed. [In re Alithochrome Corp., Bkrcty.S.D.N.Y.1985, 53 B.R. 906. Summary Judgment](#) 📌 279

---- Necessity of motion, cross motions, practice and procedure

District court could permissibly grant summary judgment in favor of staffing and recruiting services firm on contract issue if, in fact, client failed to satisfy its initial burden of coming forward with sufficient evidence to present to jury, even though services firm never brought cross-motion for summary judgment in response to client's motion for summary judgment. [Advantage Consulting Group, Ltd. v. ADT Sec. Systems, Inc., C.A.8 \(Minn.\) 2002, 306 F.3d 582. Summary Judgment](#) 📌 279

---- Partial summary judgment, cross motions, practice and procedure

Where one defendant in action by insured against two insurers filed motion for partial summary judgment against codefendants, a cross motion was not necessary to resolution of the controversy. [Union Carbide Corp. v. Travelers Indem. Co., W.D.Pa.1975, 399 F.Supp. 12. Summary Judgment](#) 📌 63

---- Preclusion of questions of fact, cross motions, practice and procedure

Cross motions for summary judgment do not warrant court in granting summary judgment unless one of parties is entitled to judgment as matter of law on facts that are not generally disputed, but cross motions may nonetheless be probative of nonexistence of factual dispute. [Bricklayers, Masons and Plasterers Intern. Union of America, Local Union No. 15, Orlando, Florida v. Stuart Plastering Co., Inc., C.A.5 \(Fla.\) 1975, 512 F.2d 1017. Summary Judgment](#) 📌 279

Where motions for summary judgment are made by both parties, if the pleadings present a genuine issue as to a material fact, there can be no valid summary judgment of the disputed facts. [Tomalewski v. State Farm Life Ins. Co., C.A.3 \(Pa.\) 1974, 494 F.2d 882. Summary Judgment](#) 📌 45(1)

Presentation of cross motions for summary judgment does not concede the absence of a material issue of fact. [Eagle v. Louisiana & Southern Life Ins. Co., C.A.10 \(N.M.\) 1972, 464 F.2d 607. See, also, Nafco Oil & Gas, Inc. v. Appleman, C.A.Okla.1967, 380 F.2d 323; Allen v. Beneficial Finance Co., D.C.Ind.1975, 393 F.Supp. 1382, affirmed 531 F.2d 797, certiorari denied 97 S.Ct. 237, 429 U.S. 885, 50 L.Ed.2d 166; Krill v. Bauer, D.C.Wis.1970, 314 F.Supp. 965; Scarboro v. Travelers Ins. Co., D.C.Tenn.1980, 91 F.R.D. 21. Summary Judgment](#) 📌 279

That counsel for opposing parties file cross motions for summary judgment and thereby superinduce idea that no factual questions are involved is insufficient alone to warrant taking case from trier of fact. [Union Ins. Soc. of Canton, Limited v. William Gluckin & Co., C.A.2 \(N.Y.\) 1965, 353 F.2d 946. Summary Judgment](#) 📌 279

Mere fact that both parties move for summary judgment does not warrant grant of either motion if record reflects genuine issue of fact. [Hindes v. U.S., C.A.5 \(Tex.\) 1964, 326 F.2d 150](#), certiorari denied [84 S.Ct. 1168, 377 U.S. 908, 12 L.Ed.2d 178](#), on remand [246 F.Supp. 147](#). See, also, [American Fidelity & Cas. Co. v. London & Edinburgh Ins. Co., C.A.Va.1965, 354 F.2d 214](#). [Summary Judgment](#) 📌 279

The mere fact that each side moves for a summary judgment does not necessarily establish that there is no issue of material fact, for, although a defendant may, on his own motion, assert that, accepting his legal theory, facts are undisputed, he may be able and should be allowed to show that, if plaintiff's legal theory be adopted, a genuine dispute as to a material fact exists. [Walling v. Richmond Screw Anchor Co., C.C.A.2 \(N.Y.\) 1946, 154 F.2d 780](#), certiorari denied [66 S.Ct. 1383, 328 U.S. 870, 90 L.Ed. 1640](#). [Summary Judgment](#) 📌 279

If both parties move for summary judgment, and the pleadings present a genuine issue on a material fact, no summary judgment on the disputed facts should be granted. [M. Snower & Co. v. U.S., C.C.A.7 \(Ill.\) 1944, 140 F.2d 367](#). [Summary Judgment](#) 📌 279

Cross-motions for summary judgment will not, in themselves, warrant grant of summary judgment unless one of parties is entitled to judgment as matter of law on facts that are not in dispute. [United Nuclear Corp. v. Cannon, D.C.R.I.1982, 553 F.Supp. 1220](#). [Summary Judgment](#) 📌 279

Cross motions do not preclude existence of genuine factual issues for summary judgment purposes. [Rensi v. Langston, W.D.Pa.1980, 499 F.Supp. 720](#). [Summary Judgment](#) 📌 279

Despite fact that when a party moves for summary judgment he is alleging that there are no material facts at issue, it does not follow that where both parties move for summary judgment they agree that there are no material issues of fact. [U. S. v. Curtis-Nevada Mines, Inc., E.D.Cal.1976, 415 F.Supp. 1373](#), affirmed in part, reversed in part [611 F.2d 1277](#). [Summary Judgment](#) 📌 279

Alleged agreement between the parties that there were no factual matters in dispute did not make it proper to grant summary judgment, where record of case contained nothing to indicate any such agreement unless it could be implied from filing of cross motions for summary judgment. [Rypkema v. Bowers, N.D.W.Va.1974, 66 F.R.D. 564](#). [Summary Judgment](#) 📌 271; [Summary Judgment](#) 📌 279

---- Ready availability, cross motions, practice and procedure

Fact that both sides sought summary judgment did not make it more readily available. [Home Ins. Co. v. Aetna Cas. & Sur. Co., C.A.2 \(N.Y.\) 1976, 528 F.2d 1388](#). [Summary Judgment](#) 📌 279

Summary judgment is not to be made more readily available merely because both parties seek it, each in their own behalf. [Heyman v. Commerce & Industry Ins. Co., C.A.2 \(Conn.\) 1975, 524 F.2d 1317](#). [Summary Judgment](#) 📌 279

---- Separate treatment, cross motions, practice and procedure

Cross motions for summary judgment are to be treated separately; denial of one does not require the grant of the other. [Buell Cabinet Co., Inc. v. Sudduth, C.A.10 \(Okla.\) 1979, 608 F.2d 431](#). [Summary Judgment](#) 📌 279

The summary judgment standard is not affected when parties file cross-motions for summary judgment; such motions are no more than claim by each side that it alone is entitled to summary judgment, and making of such inherently contradictory claims does not constitute an agreement that if one is rejected the other is necessarily justified or the losing party waives judicial consideration and determination whether genuine issues of material fact exist. [Diebold, Inc. v. Continental Cas. Co., D.N.J.2010, 719 F.Supp.2d 451](#), affirmed [430 Fed.Appx. 201, 2011 WL 2260390](#). [Summary Judgment](#) 📌 279

When confronted with cross-motions for summary judgment, court must rule on each party's motion on an individual and separate basis, determining, for each side, whether judgment may be entered in accordance with standard of summary judgment rule. [Cement Mason's Union Local No. 592 Pension Fund v. Zappone, E.D.Pa.2007, 501 F.Supp.2d 714](#). [Summary Judgment](#) 📌 279

When cross-motions for summary judgment are pending, the court must rule on each party's motion on an individual and separate basis, determining, for each side, whether a judgment may be entered in accordance with the summary judgment standard. [Sarlo v. Broadspire Services, Inc.](#), D.N.J.2006, 439 F.Supp.2d 345. [Summary Judgment](#) 279

When parties submit cross-motions for summary judgment on the same claim or issue, each motion must be considered on its own merits and analyzed under the summary judgment rule; the court must consider the appropriate evidentiary material identified and submitted in support of both motions, and in opposition to both motions, before ruling on them. [Wilson v. Costco Wholesale Corp.](#), S.D.Cal.2006, 426 F.Supp.2d 1115. [Summary Judgment](#) 279

When cross motions for summary judgment are made, court must consider each motion separately, drawing inferences against each movant in turn. [Casco Indem. Co. v. Rhode Island Interlocal Risk Management Trust](#), D.R.I.1996, 929 F.Supp. 65, affirmed in part, reversed in part 113 F.3d 2. [Summary Judgment](#) 279

When both parties file cross motions for summary judgment, court must consider each motion separately and apply controverted facts in light most favorable to nonmovant. [Stewart v. NationalLease of Kansas City, Inc.](#), D.Kan.1996, 920 F.Supp. 1188. [Summary Judgment](#) 279

When faced with cross motions for summary judgment, court must consider motions independently; court's inquiry for each motion is directed at whether evidence presents sufficient disagreement to require submission to jury or whether it is so one-sided that one party must prevail as a matter of law. [Suburban Trust and Sav. Bank v. University of Delaware](#), D.Del.1995, 910 F.Supp. 1009.

When plaintiffs and defendants have filed cross-motions for summary judgment, court must rule on each party's motion individually, determining in each case whether judgment may be entered in accordance with standard set forth in summary judgment rule. [Central States Southeast and Southwest Areas Pension Fund v. Miller](#), N.D.Ill.1994, 868 F.Supp. 995. [Summary Judgment](#) 279

--- Statements, cross motions, practice and procedure

District court would not deem all of plaintiff's facts undisputed for purposes of summary judgment in class action against restaurant operator arising out of surcharges applied to restaurant bills, where operator filed response to plaintiff's statement of undisputed material facts, and operator filed separate statement of undisputed material facts in support of its cross-motion for summary judgment. [Holt v. Noble House Hotels & Resort, Ltd.](#), S.D.Cal.2019, 370 F.Supp.3d 1158. [Summary Judgment](#) 289

Party's response to the other party's statement of material facts in support of a motion for partial summary judgment is sufficient to also serve as statement of material facts in support of its cross-motion for summary judgment. [Curbelo-Rosario v. Instituto de Banca y Comercio, Inc.](#), D.Puerto Rico 2003, 248 F.Supp.2d 26. [Summary Judgment](#) 279; [Summary Judgment](#) 289

--- Miscellaneous judgments granted, cross motions, practice and procedure

Since review of a placer mining claim cancellation by the Department of the Interior should not be a de novo judicial determination, but rather a determination that the final administrative decision is or is not substantially supported by the administrative record, a summary judgment may be granted for either party in response to their cross motions. [Denison v. Udall](#), D.C.Ariz.1965, 248 F.Supp. 942. [Summary Judgment](#) 203

--- Miscellaneous judgments denied, cross motions, practice and procedure

Leave for buyer to file untimely cross-motion for summary judgment nearly six months after deadline was not warranted, on grounds that buyer was unable to take deposition of seller's president until two days prior to deadline, since buyer was aware of inability to meet deadline two days ahead, but waited six months to request leave to file late motion. [MJR Intern., Inc. v. American Arbitration Ass'n](#), S.D.Ohio 2009, 596 F.Supp.2d 1090. [Summary Judgment](#) 275

Motion denominated by third-party plaintiffs as "cross-motion" for summary judgment against third-party defendants could not be granted where motion was not in fact cross-motion, plaintiffs had not obtained permission from court to file motion for summary

judgment, and motion failed to provide at least ten days notice. [Mid-Valley Produce Corp. v. 4-XXX Produce Corp., E.D.N.Y.1993, 819 F.Supp. 209. Summary Judgment 🗝️ 276; Summary Judgment 🗝️ 279](#)

On cross motions for summary judgment in class action challenging constitutionality of Ohio system of education and/or training for mentally handicapped school-age children, whether there were children of compulsory school age who had not been determined to be capable of substantially profiting from further instruction and who were not within public school system, required further evidence; if contingency existed and could be shown to be consequence of statewide policy, relief could be ordered but if contingency existed but was not consequence of statewide policy fostered or condoned by defendants, relief would have to be sought in state court against particular school, districts. [Cuyahoga County Ass'n for Retarded Children and Adults v. Essex, N.D. Ohio 1976, 411 F.Supp. 46. Summary Judgment 🗝️ 113](#)

Ancillary order, practice and procedure

Short of granting summary judgment, a court may enter an order narrowing the triable issues and specifying uncontroverted material facts; such an order is designed to be "ancillary" to a summary judgment motion, and therefore a party may not make a separate motion for such an order. [Patrick Schaumburg Automobiles, Inc. v. Hanover Ins. Co., N.D.Ill.2006, 452 F.Supp.2d 857. Summary Judgment 🗝️ 63](#)

Multiple motions, practice and procedure

District court's determination to allow successive motions for summary judgment lies in district court's discretion. [Enlow v. Tishomingo County, Miss., C.A.5 \(Miss.\) 1992, 962 F.2d 501, rehearing denied 971 F.2d 750. Summary Judgment 🗝️ 365](#)

A second motion for summary judgment based on expanded record is permissible and is not barred under doctrine of res judicata. [Williamsburg Wax Museum, Inc. v. Historic Figures, Inc., C.A.D.C.1987, 810 F.2d 243, 258 U.S.App.D.C. 124. Courts 🗝️ 99\(3\)](#)

A motion for summary judgment on the facts and a motion for preliminary relief can be made simultaneously, but in the alternative. [Chappell & Co. v. Frankel, C.A.2 \(N.Y.\) 1966, 367 F.2d 197. Federal Civil Procedure 🗝️ 2659; Summary Judgment 🗝️ 278\(1\)](#)

The District Court would decline to entertain former employees' successive summary judgment motion as to former employer's claims that employees misappropriated the former employer's trade secrets, even if employees discovered new information in discovery after employees had filed their first motion for summary judgment, where there was no urgency or external circumstance that forced employees to file for summary judgment prior to the conclusion of discovery, such that the earlier filing of employee's summary judgment motion was a matter of litigation strategy. [L-3 Communications Corporation v. Jaxon Engineering & Maintenance, Inc., D.Colo.2015, 125 F.Supp.3d 1155. Summary Judgment 🗝️ 365](#)

Denial of motion for summary judgment filed by ERISA benefit plan and its fiduciary, without prejudice to refiling following limited discovery related to issues raised by summary judgment motion, was warranted in action in which medical provider alleged that it was underpaid for services provided to plan beneficiaries, given that provider's request for continuance raised numerous discovery issues which it contended were relevant to issues raised by motion for summary judgment, that limited discovery was warranted with respect to provider's claims against another ERISA plan and its fiduciary, and that similar issues raised by plans and fiduciaries were more appropriately resolved together after close of limited discovery period. [Total Renal Care of North Carolina, L.L.C. v. Fresh Market, Inc., M.D.N.C.2006, 457 F.Supp.2d 619. Summary Judgment 🗝️ 345](#)

Summary judgment ruling in favor of city on police officer's failure to train claim based on First Amendment retaliation did not bar, under law-of-the-case doctrine, a second similar failure to train claim concerning a later time period, which was raised in a case that had been consolidated with the case in which summary judgment ruling was made; city had ample opportunity to move for summary judgment on the second claim at the same time it moved for summary judgment on the first claim, and thus, ruling overturning the jury's verdict against the city based on the law-of-the-case doctrine would be manifestly unfair to police officer. [Russo v. City of Hartford, D.Conn.2006, 419 F.Supp.2d 134. Courts 🗝️ 99\(3\)](#)

Party would not be permitted to file second summary judgment motion; first motion had been made after some discovery, i.e. certain depositions, had been taken but before discovery was concluded, party had been advised that bringing summary judgment motion prior to end of discovery would preclude bringing same motion on same grounds at close of discovery, and new motion was not based on new facts and sought to raise arguments party could have raised in its original motion. [Campers' World Intern., Inc. v. Perry Ellis Intern., Inc.](#), S.D.N.Y.2004, 221 F.R.D. 409. [Summary Judgment](#) 🗝️ 365

To extent that plaintiff equipment supplier's motion seeking recovery of additional amounts from contractor, after plaintiff obtained summary judgment holding contractor liable for majority of amount sought, in action seeking reimbursement for liquidated damages paid by supplier to construction project owners, was subsequent motion for summary judgment, such motion was procedurally improper, where supplier raised no new facts or arguments that it could not have raised in first round of briefing, and other issues remained pending that would require further briefing or a trial. [Siemens Westinghouse Power Corp. v. Dick Corp.](#), S.D.N.Y.2004, 219 F.R.D. 552. [Summary Judgment](#) 🗝️ 365

Form and contents of motion, practice and procedure--Generally

Where these rules relied on by defendant moving for summary judgment were clearly indicated, defendant need not cite the rules by their respective numbers. [Dunn v. J. P. Stevens & Co.](#), C.A.2 (Conn.) 1951, 192 F.2d 854. [Summary Judgment](#) 🗝️ 277(1)

Where motion for summary judgment was signed only by counsel and was not in affidavit form, the motion was not properly to be weighed, as far as its factual statements were concerned, in determining whether summary judgment should be granted. [Wittlin v. Giacalone](#), App.D.C.1946, 154 F.2d 20, 81 U.S.App.D.C. 20. [Summary Judgment](#) 🗝️ 277(1)

Government's motion for summary judgment exceeded scope of non-record claims set for early resolution in scheduling order in action under Endangered Species Act (ESA) challenging reasonable and prudent alternative (RPA) in Fish and Wildlife Service's (FWS) biological opinion (BiOp) regarding impact of coordinated operations of state water projects on threatened delta smelt, and thus would be stricken, where scheduling order permitted parties to present their RPA claims only to extent they addressed whether legal requirements had been met, without necessity of determination of disputed factual issues in administrative record, and government's arguments referred to and relied on administrative record. [San Luis & Delta-Mendota Water Authority v. Salazar](#), E.D.Cal.2009, 666 F.Supp.2d 1137. [Federal Civil Procedure](#) 🗝️ 1935.1; [Summary Judgment](#) 🗝️ 275

Summary judgment motions in declaratory judgment action to determine obligations of World Trade Center lessees' excess liability insurers regarding terrorist attacks of September 11, 2001 were not defective, even if they did not specify the parties against whom relief was sought; parties were known, relief of imposition of duty to defend insureds was clearly raised, and prompt adjudication was necessary for progress of numerous lawsuits regarding attacks. [In re September 11th Liability Ins. Coverage Cases](#), S.D.N.Y.2006, 458 F.Supp.2d 104, subsequent determination 2006 WL 1876672. [Summary Judgment](#) 🗝️ 277(1)

Motion for summary judgment filed by state department of toxic substances control (DTSC), stating simply that DTSC sought partial summary judgment under CERCLA against estate of deceased owner of smelting facility to extent of its insurance coverage, satisfied writing requirement of rules of civil procedure, when coupled with accompanying memorandum, declarations, and exhibits, which fully informed estate's insurance companies of specific issues and arguments involved. [California Dept. of Toxic Substances Control v. Interstate Non-Ferrous Corp.](#), E.D.Cal.2003, 298 F.Supp.2d 930. [Summary Judgment](#) 🗝️ 277(1)

At the summary judgment stage, plaintiffs may not merely allege their standing to sue, but they must support their claims with affidavits or other evidence of specific facts. [Defenders of Wildlife v. Norton](#), D.D.C.2003, 257 F.Supp.2d 53. [Federal Civil Procedure](#) 🗝️ 103.2

Summary judgment motion was properly combined with contentions that certain aspects of plaintiff's claims failed as matter of law. [Ritzie v. City University of New York](#), S.D.N.Y.1989, 703 F.Supp. 271. [Summary Judgment](#) 🗝️ 277(1)

Plaintiff's failure to reduce factual allegations of complaint to evidentiary form did not entitle defendants to summary judgment; nothing in defendants' motion, Statement of Undisputed

Material Facts or supporting memorandum could have put plaintiff on notice that defendants challenged plaintiff's ability to provide factual basis for his claim. [Willis v. Bell, N.D.Ill.1988, 687 F.Supp. 380. Summary Judgment](#) 📌 282

Summary judgment could not be entered for plaintiff, where his motion did not describe elements of cause of action, nor marshal undisputed evidence to support those elements. [Murphy v. Villanova University, E.D.Pa.1981, 520 F.Supp. 560. Summary Judgment](#) 📌 277(1)

---- Briefs, form and contents of motion, practice and procedure

Plaintiff could not request summary judgment in her brief in opposition to defendant's motion for summary judgment; only an appropriate motion seeking such relief, in accordance with the Federal Rules, would serve this purpose. [Woodland v. Viacom, Inc., D.D.C.2008, 569 F.Supp.2d 83. Summary Judgment](#) 📌 277(1)

---- Oral motion, form and contents of motion, practice and procedure

Summary judgment could not be based on oral motion, nor could trial judge render summary judgment sua sponte. [Matter of Hailey, C.A.5 \(Miss.\) 1980, 621 F.2d 169. Summary Judgment](#) 📌 280

Oral motions for summary judgment in federal courts are not authorized. [Sequoia Union High School Dist. v. U.S., C.A.9 \(Cal.\) 1957, 245 F.2d 227. Summary Judgment](#) 📌 277(1)

Where defendants filed motion for summary judgment based on same grounds as defenses alleged in their answer, and attached to the motion evidentiary facts relied on to establish the defenses, in form of affidavits and certain documents, and attorney for defendants stated that they could offer nothing further on the trial of the case, and that there was no dispute as to the facts, there was no procedural defect in the entering of summary judgment for plaintiff, even though judgment be considered as a summary one entered on plaintiff's oral motion without notice. [Tripp v. May, C.A.7 \(Ill.\) 1951, 189 F.2d 198. Summary Judgment](#) 📌 279

If defendants were entitled to summary judgment, it could properly be granted by court even without a written or formal motion. [Time Inc. v. Bernard Geis Associates, S.D.N.Y.1968, 293 F.Supp. 130, 159 U.S.P.Q. 663. Summary Judgment](#) 📌 280

Where no written motion for summary judgment was filed in case by defendant but a brief in support of such motion had been filed and plaintiff treated record as containing defendant's motion for summary judgment, court had authority to order clerk to enter a summary judgment for defendant. [Spickard v. Ribicoff, W.D.Ky.1962, 211 F.Supp. 555. Summary Judgment](#) 📌 351

---- Local rules, form and contents of motion, practice and procedure

District court would overlook fact that defendants failed to file separate statement of undisputed facts when moving for summary judgment, as required under local rules, in civil rights action, since defendants' memorandum of law in support of their motion for summary judgment contained detailed "Statement of Facts." [Young v. Suffolk County, E.D.N.Y.2013, 922 F.Supp.2d 368. Summary Judgment](#) 📌 289

Former employer violated local rule prohibiting disclosure of communications made in mediation process by referencing mediation process in motion for summary judgment in employee's action alleging breach of severance agreement, and references to mediation would therefore be stricken from motion; employer's arguments that action was settled in mediation, and its attachment of draft settlement agreement to motion, were flagrant violations of local rule and particularly egregious given that chief mediator thoroughly explained local rules to employer. [Davis v. National Council of Negro Women, Inc., D.D.C.2011, 821 F.Supp.2d 262, ordered unsealed 2011 WL 5025009. Privileged Communications And Confidentiality](#) 📌 417; [Summary Judgment](#) 📌 277(1); [Summary Judgment](#) 📌 290

Court would not consider motion in limine to preclude expert from offering evidence for purposes of deciding summary judgment motion on telecommunications company's trespass and negligence claims against town's contractor and subcontractor for subcontractor's severing of company's fiber optic cable during excavation to install irrigation sleeve for town, where contractor cited to and attached expert's deposition in its own brief and local rules required that motions to exclude evidence used in written motions must be

presented in the objecting party's responsive or reply memorandum. [Sprint Communications Co., L.P. v. Western Innovations, Inc., D.Ariz.2009, 618 F.Supp.2d 1101](#), reconsideration denied [618 F.Supp.2d 1121](#), on reconsideration in part [2009 WL 1458467](#), supplemented [618 F.Supp.2d 1124](#). [Federal Civil Procedure](#) 📖 614

Buyer's failure to include any statements in its summary judgment motion relevant to its argument, that lost profits damages for certain intellectual property rights purchased from seller were too speculative because seller's damages expert relied on unsupported assumption provided by seller, warranted denial under local rule requiring movants to include not just some but all facts material to motions for summary judgment. [Pharmacy, Inc. v. American Pharmaceutical Partners, Inc., E.D.N.Y.2007, 511 F.Supp.2d 324](#). [Summary Judgment](#) 📖 351

The court would consider defendants motion to dismiss or, in the alternative, for summary judgment, solely as a motion to dismiss, since defendants failed to provide a statement of material facts as to which they contended there was no genuine issue, as required by local rule, notwithstanding that defendants submitted a narrative statement of facts in their memorandum of law and submitted a stack of documents; documents were submitted with no foundation. [Tabb v. District of Columbia, D.D.C.2007, 477 F.Supp.2d 185](#). [Federal Civil Procedure](#) 📖 1825

Moving party's failure to file supporting memorandum of law with his summary judgment motion, as required by local rule, required denial of summary judgment without prejudice with leave to refile upon compliance with the Local Rule. [Sharp v. Bivona, E.D.N.Y.2004, 304 F.Supp.2d 357](#). [Summary Judgment](#) 📖 358

Trial court would consider motion for summary judgment, even though movant did not satisfy local rule requirement that short summary of facts about which there is allegedly no dispute be attached to notice of motion and that nonmovant attach statement of material facts as to which there was genuine issue in its opposition papers; facts could be gleaned from other documents and "pointed to" existence of disputed fact issues. [Aligheri v. Long Island R.R., S.D.N.Y.1994, 156 F.R.D. 55](#). [Summary Judgment](#) 📖 289

---- Statements, form and contents of motion, practice and procedure

Because summary judgment was merely procedural mechanism to allow District Court to adjudicate denial of ERISA benefits in case in which facts were not in question, participant's motion for summary judgment would not be dismissed based on her failure to include statement of material facts. [Reeder v. Sun Life Assur. Co. of Canada, Inc., D.Mass.2007, 497 F.Supp.2d 125](#). [Summary Judgment](#) 📖 289

If a certain fact is not contained in a properly supported paragraph in the movant's statement of material fact, the Court need not consider that fact for purposes of the summary judgment motion. [Barmore v. Aidala, N.D.N.Y.2005, 419 F.Supp.2d 193](#). [Summary Judgment](#) 📖 289

Government's statement of material facts not in dispute submitted in support of its motion for summary judgment was inadequate, and thus court would deny government's motion without prejudice, even though government's statement of material facts located within its memorandum in support of its motion for summary judgment identified by paragraph number statement it sought to rebut and indicated why statement should not have been accepted as true, where government failed to provide precise language supporting its claim, and merely reiterated generic statement that "Administrative Record speaks for itself." [Smith Property Holdings, 4411 Connecticut L.L.C. v. U.S., D.D.C.2004, 311 F.Supp.2d 69](#). [Summary Judgment](#) 📖 289

Better practice requires that each factual contention set forth in statement of material facts with respect to summary judgment motion be cross referenced to the exact portion of record from which that contention is derived. [Eldon Industries, Inc. v. Paradies & Co., N.D.Ga.1975, 397 F.Supp. 535](#). [Summary Judgment](#) 📖 289

Response to motion, practice and procedure--Generally

Plaintiff's numerous citations to his "Exhibit 1," which was voluminous, and to full affidavits, when resisting motion for summary judgment, did not meet the specificity requirements of the summary judgment rule. [Tolen v. Ashcroft, C.A.8 \(Mo.\) 2004, 377 F.3d 879](#). [Summary Judgment](#) 📖 101

Contents of pro se inmate's resistance to motion for summary judgment by physician and officials at state correctional facility substantially complied with requirements of summary judgment rule, and thus district court would consider response, for purposes of inmate's [§ 1983](#) action alleging staff was deliberately indifferent to his serious medical needs in violation of Eighth Amendment in delaying provision of medical treatment for his knee; inmate subsequently submitted statement in response to district court's order to correct deficiency which verified they were made under penalty of perjury, bulk of inmate's responses were numbered consistently with numbered paragraphs of defendants' statement of material fact, making it easy for court to follow his argument and understand which of defendants' statement of material fact he disputed, and inmate referred to same medical documents used by defendants to make his arguments. [Dantzler v. Baldwin](#), [S.D.Iowa 2023](#), 721 F.Supp.3d 768. [Summary Judgment](#) 🏷️ 286

Property owners would not be permitted to file nunc pro tunc response in opposition to loan servicer's motion for summary judgment in property owners' action to rescind mortgage, even though property owners previously appeared pro se and only recently retained counsel, where their alleged inability to understand English had not previously prevented them from complying with deadlines, and filing of nunc pro tunc response would be futile, since they had not included statement of disputed facts as required by summary judgment rule. [Ferreira v. Mortgage Electronic Registration Systems, Inc.](#), [D.Mass.2011](#), 794 F.Supp.2d 297. [Summary Judgment](#) 🏷️ 284

Court could treat arguments raised by defendant in motion for summary judgment, but not addressed by plaintiff, as conceded, after plaintiff filed opposition and addressed only certain arguments raised by defendant, since litigants had burden to crystallize pertinent factual and legal landscape for court. [Sloan v. Urban Title Services, Inc.](#), [D.D.C.2011](#), 770 F.Supp.2d 216. [Summary Judgment](#) 🏷️ 286

On motion for summary judgment, the nonmoving party may not merely state that it will discredit the moving party's evidence at trial, in the hopes that evidence can be developed at trial to support the claim. [Tapps Brewing Inc. v. City of Sumner](#), [W.D.Wash.2007](#), 482 F.Supp.2d 1218, as amended, affirmed 545 F.3d 803, withdrawn from bound volume, amended and superseded on denial of rehearing [548 F.3d 1219](#), certiorari denied [129 S.Ct. 2765](#), 556 U.S. 1282, 174 L.Ed.2d 270. [Summary Judgment](#) 🏷️ 95

Alleged discussion of defendant's contentions at initial scheduling conference was insufficient response to defendant's subsequently filed motion for summary judgment; plaintiff could not rely on matters which were not in record of case to support opposition to summary judgment, and court would treat defendant's motion as unopposed. [Aponte v. Puerto Rico Marine Management, Inc.](#), [D.Puerto Rico 1992](#), 794 F.Supp. 55, vacated in part [989 F.2d 484](#), on remand [830 F.Supp. 95](#). [Summary Judgment](#) 🏷️ 282

Memorandum stating in conclusory fashion that many issues of fact existed and that defendants "are surely entitled to present further evidence" did not meet obligation imposed on party opposing motion for summary judgment. [Local 314, Nat. Post Office Mail Handlers v. National Post Office Mail Handlers](#), [E.D.Mo.1983](#), 572 F.Supp. 133. [Summary Judgment](#) 🏷️ 95

Although attaching evidentiary documents to memoranda in compliance with this rule and local rules was impractical, such did not absolve plaintiffs from obligation in opposing motion for summary judgment to make supporting documentation readily accessible to court or to opposing parties for purposes of substantiating their factual contentions and inferences. [Zoslaw v. Columbia Broadcasting System, Inc.](#), [N.D.Cal.1980](#), 533 F.Supp. 540, affirmed in part, reversed in part on other grounds [693 F.2d 870](#), certiorari denied [103 S.Ct. 1777](#), 460 U.S. 1085, 76 L.Ed.2d 349, on remand [594 F.Supp. 1022](#). [Summary Judgment](#) 🏷️ 286

---- Local rules, response to motion, practice and procedure

Former employee failed to cite with particularity, in accordance with local summary judgment rule, expert's deposition testimony to support statement of fact that employee was "qualified individual with a disability," and thus district court would not consider that testimony in ruling on summary judgment in employee's action under ADA for failure to accommodate her mental health issues; employee did not attach particular exhibit to which she cited to cited document, and even if citation were sufficient, statement of fact was not

material to interactive-process issue. [Norwood v. United Parcel Service, Inc., C.A.10 \(Kan.\) 2023, 57 F.4th 779. Summary Judgment 🗝️ 326](#)

District court acted within its discretion in denying plaintiff's motion for leave to file response brief with excess pages in opposition to defendant's motion for summary judgment, for failure to timely file brief that complied with local rule's requirement to include supporting documentary evidence as exhibits; plaintiff filed motion within minutes of deadline, and failure to include exhibits rendered filing deficient not only in form, but also in substance. [Yancick v. Hanna Steel Corp., C.A.7 \(Ill.\) 2011, 653 F.3d 532. Summary Judgment 🗝️ 286; Summary Judgment 🗝️ 290](#)

District court did not abuse its discretion when it deemed defendant's proposed findings of fact admitted and refused to consider the additional facts alleged by plaintiff in her response to defendant's motion for summary judgment, based on plaintiff's failure to follow the local rule for making and opposing proposed finding of fact for summary judgment which required plaintiff to respond to defendant's proposed findings paragraph by paragraph and to put own proposed findings in separate numbered paragraphs; plaintiff included only a "statement of facts" which did not directly respond to defendant's proposed findings and lumped several distinct factual assertions together in each paragraph. [Schmidt v. Eagle Waste & Recycling, Inc., C.A.7 \(Wis.\) 2010, 599 F.3d 626. Summary Judgment 🗝️ 289](#)

To the extent that the local rule providing that the court would deem the summary judgment movant's citations supportive of its facts unless the respondent specifically informed the court to the contrary in the response permitted the district court to grant summary judgment without first reviewing the materials submitted with the motion to ensure that the motion was properly supported, the local rule was void by virtue of conflict with federal rule of civil procedure governing summary judgment. [Reese v. Herbert, C.A.11 \(Ga.\) 2008, 527 F.3d 1253, rehearing and rehearing en banc denied 285 Fed.Appx. 742, 2008 WL 2959763, rehearing and rehearing en banc denied 285 Fed.Appx. 743, 2008 WL 2977886. Federal Civil Procedure 🗝️ 25; Summary Judgment 🗝️ 31; Summary Judgment 🗝️ 277\(1\); Summary Judgment 🗝️ 286](#)

Acceptance for summary judgment purposes of defendants' entire statement of facts in support their motion for summary judgment was warranted, where plaintiff failed to submit document responding particularly to each numbered paragraph in defendants' statement, and providing citations to supporting evidentiary materials, as required by local procedural rule governing summary judgment proceedings. [Smith v. Lamz, C.A.7 \(Ill.\) 2003, 321 F.3d 680. Summary Judgment 🗝️ 286; Summary Judgment 🗝️ 289](#)

Where employee failed to comply with local rule requiring that a brief in response to summary judgment motion include a specifically captioned section listing all disputed material facts, and failed to dispute facts or provide evidence, the district court would deem facts identified by employer as undisputed and admitted by employee, in deciding employer's motion for summary judgment in Fair Labor Standards Act (FLSA) action alleging failure to pay overtime wages, and as a result, would move to the next step of the summary judgment analysis and determine whether the undisputed facts supported a judgment in favor of employer as a matter of law. [Brown v. Serenity C & C, Inc., E.D.Va.2019, 391 F.Supp.3d 546. Summary Judgment 🗝️ 289](#)

Failure to comply with local rule requiring motion for summary judgment to be accompanied by separate, short and concise statement of material facts may result, where appropriate, in judgment in favor of opposing party. [Ramos-Borges v. Puerto Rico, Puerto Rico Health Dept., D.Puerto Rico 2010, 740 F.Supp.2d 262. Summary Judgment 🗝️ 277\(1\); Summary Judgment 🗝️ 289; Summary Judgment 🗝️ 351](#)

On motion for summary judgment, district court would exercise its discretion to overlook plaintiffs' failure to comply with local rule requiring plaintiffs to file and serve response to defendants' statements of facts, and would deem admitted only those facts in defendants' statements that were supported by admissible evidence and not controverted by other admissible evidence in the record; plaintiffs did provide some outline of their factual position in their opposition papers with some citation to the factual record, and both the court and defendants were thus able to discern the factual evidence upon which plaintiffs attempted to rely to create material issues of disputed fact to overcome summary judgment. [Iannuzzi v. American Mortg. Network, Inc., E.D.N.Y.2010, 727 F.Supp.2d 125. Summary Judgment 🗝️ 271; Summary Judgment 🗝️ 286; Summary Judgment 🗝️ 289](#)

District court would not strike any portion of teacher's submissions in response to school officials' motion for summary judgment in teacher's free speech retaliation action, despite officials' arguments that various statements were inadmissible, inasmuch as Local Rule required District Court to consider only those statements of fact that were supported by the evidence. [Carone v. Mascolo, D.Conn.2008, 573 F.Supp.2d 575. Summary Judgment 286](#)

Allegations in defendants' statement of material facts were deemed admitted for purposes of summary judgment motion, where plaintiffs failed to submit responsive statement mirroring allegations in defendants' statement, as required by local rules. [Feacher v. Intercontinental Hotels Group, N.D.N.Y.2008, 563 F.Supp.2d 389. Summary Judgment 282; Summary Judgment 289](#)

In employment discrimination litigation, employer's summary judgment motion would not be granted on basis of pro se employee's failure to comply with local rule requiring him to file statement with memorandum in opposition to motion for summary judgment. [Wilks v. Elizabeth Arden, Inc., D.Conn.2007, 507 F.Supp.2d 179. Summary Judgment 291](#)

District Court would consider pro se plaintiff's memorandum opposing defendant's motion for summary judgment, although pro se memorandum did not comply with local rule governing summary judgment because it did not contain any legal analysis, where memorandum contained factual assertions. [Ryder v. Washington Mut. Bank, F.A., D.Conn.2007, 501 F.Supp.2d 311. Summary Judgment 291](#)

Nonmovant failed, in opposition to motion for summary judgment, to comply with local rule requiring him to provide a concise statement of genuine issues necessary to be litigated, by adequately controverting movant's statement of undisputed material facts, and thus movant's statement would be deemed admitted; nonmovant's statement, which blended factual assertions with legal argument, failed to identify with particularity the material facts necessary to support his opposition to the summary judgment motion. [Canning v. U.S. Dept. of Defense, D.D.C.2007, 499 F.Supp.2d 14. Summary Judgment 289](#)

Plaintiffs' opposition to defendants' motion for summary judgment did not comply with district court's 25-page limit, and thus defendants' summary judgment motion would be considered unopposed, although plaintiffs had modified the opposition so that it was 25 pages long, and plaintiffs claimed they used 12 point font, where the minute condensed font with expanded margins made the reading of the document unbearable. [Rivera v. Caribbean Refrescos Inc., D.Puerto Rico 2004, 332 F.Supp.2d 435, affirmed 150 Fed.Appx. 3, 2005 WL 2253609. Summary Judgment 282](#)

Although former employee of District of Columbia failed to submit statement of material facts that were in dispute which complied with requirements of local rule in his opposition to employer's motion for summary judgment in disability discrimination action, district court would, in its discretion, consider all the evidence in record in determining whether any genuine issues of material fact existed, which would preclude summary judgment for employer. [Haynes v. Williams, D.D.C.2003, 279 F.Supp.2d 1, affirmed 392 F.3d 478, 364 U.S.App.D.C. 108. Summary Judgment 289](#)

Neighboring landowners seeking to enjoin municipal approval of construction of dry nuclear waste storage unit, on premises of nuclear power plant, pursuant to litigation settlement approved by federal court, would be deemed to have made no response to summary judgment motion by power plant and municipality, when landowners violated local rule calling for statement of material facts precluding summary judgment by stating legal conclusions and propositions, not supported by required citations to record. [Egri v. Connecticut Yankee Atomic Power Co., D.Conn.2002, 270 F.Supp.2d 285. Summary Judgment 289](#)

---- Statements, response to motion, practice and procedure

Supplemental facts submitted by plaintiff in opposition to defendant's motion for summary judgment, pursuant to local rule requiring party opposing summary judgment to submit with its opposition "separate, short, and concise statement of material facts," were either not material, speculation, or argumentation, and thus district court was not required to deem them admitted upon defendant's failure to deny or qualify them in action involving dispute over sums due under certificate of insurance. [Tropigas de Puerto Rico, Inc. v. Certain](#)

[Underwriters at Lloyd's of London, C.A.1 \(Puerto Rico\) 2011, 637 F.3d 53. Summary Judgment 🏠 95; Summary Judgment 🏠 277\(1\); Summary Judgment 🏠 289](#)

Injured school bus driver's responses in opposition to bus manufacturer's motion for summary judgment were not so inadequate as to amount to admissions of manufacturer's facts, and thus, motion would not be treated as unopposed, in action for strict products liability and other claims; bus driver denied ten facts alleged by manufacturer, driver presented paragraph-by-paragraph response to manufacturer's statement of material fact and denied statements for which manufacturer provided no support, and driver specifically asserted that those facts were either not supported by record or were mere conclusions of its expert. [Gonzalez v. Thomas Built Buses, Inc., M.D.Pa.2013, 934 F.Supp.2d 747. Summary Judgment 🏠 282](#)

In former Puerto Rico Department of Corrections (DCR) employee's [§ 1983](#) action, statement of uncontested facts by plaintiff's former supervisor, the Director of Special Arrest Unit (SAU), was relevant to claim of political discrimination and would be considered on summary judgment; employee claimed that supervisor knew he was member of opposition party partly because he had previously sued for political discrimination, whereas supervisor claimed he was not named as defendant in employee's previous suit and that he did not know of plaintiff's political affiliation until he was summoned and given copy of complaint in present case. [Del Toro-Pacheco v. Pereira-Castillo, D.Puerto Rico 2009, 662 F.Supp.2d 202, affirmed 633 F.3d 57. Summary Judgment 🏠 286; Summary Judgment 🏠 289](#)

District Court would not consider portion of plaintiff's statement of facts which was in Spanish, for purpose of defendants' motion for summary judgment, where Court granted plaintiff additional time to have it translated, but plaintiff failed to do so. [Cruz-Acevedo v. Toledo-Davila, D.Puerto Rico 2009, 660 F.Supp.2d 205. Summary Judgment 🏠 284](#)

When a party opposing a motion for summary judgment fails to comply with the "anti-ferret rule," which requires the opposing party to present a concise statement of material facts as to which there is a genuine issue to be tried, the statement of material facts filed by the party seeking summary judgment shall be deemed admitted. [Rivera Martell v. American Express Co., D.Puerto Rico 2008, 598 F.Supp.2d 177, reconsideration denied 2008 WL 11357814. Summary Judgment 🏠 289](#)

While court is not required to consider what parties fail to point out in their summary judgment statements, it may in its discretion opt to review record independently even where party has failed to file such statement, or where statement filed by party fails to satisfy local rule's dictates. [Gallo v. Alitalia-Linee Aeree Italiane-Societa per Azioni, S.D.N.Y.2008, 585 F.Supp.2d 520. Summary Judgment 🏠 271; Summary Judgment 🏠 286; Summary Judgment 🏠 302](#)

Repeated statements in proposed findings of fact that "at least one" accused product infringed did not satisfy summary judgment standard that required patent owner to set forth specific facts in opposing competitor's motion for summary judgment; owner had to propose facts regarding which accused product infringed and how it infringed. [LG Electronics, Inc. v. Quanta Computer Inc., W.D.Wis.2008, 566 F.Supp.2d 910. Patents 🏠 1936](#)

When plaintiff has failed to respond to defendant's statement of material facts in support of summary judgment motion, facts as set forth in statement will be accepted as true to extent that (1) the facts are supported by the evidence in the record, and (2) the non-moving party, if he is proceeding pro se, has been specifically advised of the potential consequences of failing to respond to the movant's motion for summary judgment. [Crum v. Dodrill, N.D.N.Y.2008, 562 F.Supp.2d 366. Summary Judgment 🏠 282; Summary Judgment 🏠 291](#)

Statement of material facts submitted by a party responding to a summary judgment motion is not a mere formality, and the courts apply this rule strictly. [Krug v. County of Rennselaer, N.D.N.Y.2008, 559 F.Supp.2d 223. Summary Judgment 🏠 289](#)

Moving parties' statement of facts on motion for summary judgment would be treated as uncontested where nonmoving parties, instead of admitting or denying opponents' statement of facts, brought forth new allegations without citing to record. [Diaz Aviation Corp. v. Alvarez, D.Puerto Rico 2008, 556 F.Supp.2d 94. Summary Judgment 🏠 289](#)

District court would consider defendants' Statement of Material Facts as undisputed material facts for purposes of summary judgment, where plaintiff responded to most paragraphs of Statement only by stating that Defendants' factual "allegations" were "not facts established by the administrative record in this case" and that plaintiff "has no information, nor has he had reasonable opportunity to discover same, regarding those factual allegations," and plaintiff did not file affidavit stating he could not present facts essential to justify his opposition motion without further discovery. [Christensen v. Qwest Pension Plan, D.Neb.2005, 376 F.Supp.2d 934](#), affirmed [462 F.3d 913](#). [Summary Judgment](#) 🏠 286; [Summary Judgment](#) 🏠 289; [Summary Judgment](#) 🏠 310

Responsive statement of material facts, which contained numerous denials, but did not contain a single citation to the record, did not comply with local rules and, thus, would not been considered on motion for summary judgment. [Morgan v. Niles, N.D.N.Y.2003, 250 F.Supp.2d 63](#). [Summary Judgment](#) 🏠 289

A nonmovant's failure to provide a statement of contested material facts does not automatically warrant the granting of summary judgment. [San Juan Star Co. v. Casiano Communications, Inc., D.Puerto Rico 2001, 176 F.Supp.2d 110](#). [Summary Judgment](#) 🏠 289

Amendment of response to motion, practice and procedure

Employee would not, eleven weeks after it was filed and over six weeks after reply was filed, be permitted to amend his memorandum in opposition to employer's summary judgment motion, which exceeded page limitation set forth in local rule and was otherwise deficient; no possible excusable neglect could justify granting motion by employee's counsel for leave to amend response. [Coleman v. Blue Cross Blue Shield of Kan., D.Kan.2007, 487 F.Supp.2d 1225](#), affirmed [287 Fed.Appx. 631, 2008 WL 2662595](#). [Summary Judgment](#) 🏠 288

Where defendants were given leave to correct omission in support of their motion for summary judgment, district court would not order that plaintiff's amended memorandum in opposition to motion for summary judgment be stricken, even though technically untimely in terms of initial filing date of defendants' motion. [Morrow v. Bassman, S.D.Ohio 1981, 515 F.Supp. 587](#), affirmed [785 F.2d 309](#). [Summary Judgment](#) 🏠 275

Briefs, practice and procedure

Parties made excessive use of footnotes in summary judgment brief in apparent attempt to circumvent page limits set forth in Local Civil Rules, where across pleadings for three pending motions court identified at least 25 footnotes directly addressing significant substantive issues, and while court would address parties' footnotes as relevant in case at hand, in the future parties were to include arguments they considered important in body of their brief. [Ohio Head Start Ass'n, Inc. v. U.S. Dept. of Health and Human Services, D.D.C.2012, 873 F.Supp.2d 335](#), injunction pending appeal denied [902 F.Supp.2d 61](#), affirmed [510 Fed.Appx. 1, 2013 WL 2393046](#). [Summary Judgment](#) 🏠 290

Wildlife protection organizations' summary judgment brief provided only minimal argument and authority, and thus was insufficient to support claim that United States Forest Service (USFS) violated National Environmental Policy Act (NEPA) by irretrievably committing money to mark trees in hazardous fuel reduction project area before a final decision had been made regarding project alternatives; brief gave only a litany of conclusions not adequately tied to the record. [Wildwest Institute v. Bull, D.Mont.2006, 468 F.Supp.2d 1234](#), affirmed [547 F.3d 1162](#). [Summary Judgment](#) 🏠 290

State's submission of summary judgment brief against pro se prisoner's § 1983 action against various corrections officials failed to follow Nebraska requirement that brief state material facts in short numbered paragraphs and provide pinpoint references to the record, and thus said failure, inter alia, warranted denial of summary judgment motion without prejudice. [Hillard v. Clarke, D.Neb.2007, 245 F.R.D. 419](#). [Summary Judgment](#) 🏠 290

Rebuttal memorandum, practice and procedure

District courts may adopt local rules requiring opposing party to summary judgment motion to file statement of opposition, so long as judgment is not automatically rendered on behalf of movant if non-movant fails to file such a statement. [Andrews v. Texas Park & Wildlife Dept., E.D.Tex.2001, 196 F.Supp.2d 424](#). [Summary Judgment](#) 🏠 282

District Court would not consider, for purposes of deciding summary judgment motion, contentions raised by defendant for first time in its rebuttal memorandum in support of its motion for summary judgment. [McDaniel v. Mississippi Baptist Medical Center](#), S.D.Miss.1994, 869 F.Supp. 445. [Summary Judgment](#) 🏠 290

District court would not allow government in tax case to file rebuttal brief after filing of summary judgment motion, government's response to motion, and reply to response, despite government's contentions that reply raised new arguments, went beyond scope of response, cited cases government had not had opportunity to address, was misleading, mischaracterized government's arguments, falsely asserted that government made admissions, and suggested impropriety by government's counsel; court could ascertain from reading of initial, response, and reply briefs cases which supported parties' arguments without further enlightenment from government's rebuttal brief and did not need rebuttal to determine whether government had made admissions and whether reply raised new arguments. [U.S. v. Hodgekins](#), N.D.Ind.1992, 805 F.Supp. 653, motion to vacate denied 832 F.Supp. 1255, affirmed 28 F.3d 610. [Summary Judgment](#) 🏠 290

Reply, practice and procedure

District court would not strike county defendants' summary judgment reply memorandum, in civil rights action, even though reply was filed after deadline set by district court, since it appeared that defendants' tardiness in filing reply was due to delayed recognition of filing mistake, namely, that they had re-filed their original memorandum within deadline, rather than their reply, and plaintiff suffered no prejudice from delay. [Young v. Suffolk County](#), E.D.N.Y.2013, 922 F.Supp.2d 368. [Summary Judgment](#) 🏠 284; [Summary Judgment](#) 🏠 287; [Summary Judgment](#) 🏠 290

District court would decline to consider federal employer's arguments in its summary judgment reply brief regarding component acts which could be considered in support of African-American former employee's hostile work environment claims under Title VII and Congressional Accountability Act (CAA), where reply contravened terms of court's scheduling and procedural orders; employer improperly attempted to incorporate argument made in its opening memoranda instead of setting forth all information relevant to its response in correspondingly numbered paragraph, failed to offer precise citations to evidence in record, and failed to segregate its response to each paragraph in employee's responsive statements with separate corresponding paragraph. [Herbert v. Architect of Capitol](#), D.D.C.2012, 839 F.Supp.2d 284. [Summary Judgment](#) 🏠 282

On motion for summary judgment in action by interior construction company against carpenters union alleging violations of National Labor Relations Act (NLRA), district court would not consider company's reply to union's response to company's statement of undisputed material facts; despite company's assertion, local rule governing summary judgment motions only authorized reply where non-movant filed separate statement of additional facts with its response to movant's statement of undisputed facts, and union did not file separate statement of additional facts. [Circle Group, L.L.C. v. Southeastern Carpenters Regional Council](#), N.D.Ga.2011, 836 F.Supp.2d 1327. [Summary Judgment](#) 🏠 289

Where new evidence is presented in either a party's reply brief or affidavit in further support of its summary judgment motion, district court should permit nonmoving party to respond to the new matters prior to disposition of the motion or else strike that new evidence; however, where reply affidavit merely responds to matters placed in issue by the opposition brief and does not spring upon opposing party new reasons for the entry of summary judgment, reply papers--both briefs and affidavits--may properly address those issues. [Baugh v. City of Milwaukee](#), E.D.Wis.1993, 823 F.Supp. 1452, motion to amend denied 829 F.Supp. 274, affirmed 41 F.3d 1510. [Summary Judgment](#) 🏠 288; [Summary Judgment](#) 🏠 290; [Summary Judgment](#) 🏠 313(1)

Sur-reply, practice and procedure

District court was entitled to reject former police officer's late request to file a surreply to former supervisor's summary judgment motion, refuse to strike former supervisor's declaration, and limit pages of former officer's response, in former officer's § 1983 action alleging violation of First and Fourteenth Amendment regarding former officer's termination, where former officer had ample opportunity to litigate summary judgment motion, district court accommodated former officer in granting a number of extensions of time, and former

officer did not identify how the challenged aspects of former supervisor's declaration or additional summary judgment evidence that former officer wanted to include could have overcome any of the primarily legal obstacles to former officer's claims. [Sims v. City of Madisonville, C.A.5 \(Tex.\) 2018, 894 F.3d 632. Summary Judgment 🏷️ 282; Summary Judgment 🏷️ 287; Summary Judgment 🏷️ 310](#)

Financing broker's alternative basis for breach of contract claims against client, raised for first time in sur-reply during summary judgment proceedings after lengthy discovery, was inadequate, and thus, broker waived alternative basis for claim. [Trade Finance Partners, LLC v. AAR Corp., C.A.7 \(Ill.\) 2009, 573 F.3d 401. Summary Judgment 🏷️ 287](#)

Employee's evidence could be considered by district court on employer's motion for summary judgment in age and national origin discrimination and retaliation action, although employer argued that evidence was unauthenticated, irrelevant, hearsay, not submitted under penalty of perjury, or inadmissible for other reasons; employee filed sur-reply to address employer's specific evidentiary arguments, attaching three declarations to sur-reply that cured any authentication deficiency that his earlier filings may have contained, and challenged deficiencies also could have been cured by employee's expert report or other evidence at trial. [Tsur v. Intel Corporation, D.Or.2022, 648 F.Supp.3d 1292. Summary Judgment 🏷️ 305; Summary Judgment 🏷️ 308](#)

Surreply to insurer's summary judgment motion was not limited to requests to strike material in insurer's reply brief but, instead, substantively responded to insurer's arguments that portions of insured's submissions should be stricken and, thus, surreply or documents filed with it would not be considered in insured's action against his automobile insurer, alleging insurer underpaid and mishandled his underinsured motorist (UIM) benefits claim arising when his vehicle was rear-ended while stopped in traffic, which caused his vehicle to collide with car in front of him. [Sagdai v. Travelers Home and Marine Insurance Company, W.D.Wash.2022, 639 F.Supp.3d 1091. Summary Judgment 🏷️ 287](#)

Requester would not be permitted to file sur-reply following briefing on government's motion for summary judgment in Freedom of Information Act (FOIA) suit, in order to address matter raised in government's reply brief, since sur-reply would simply be a rehashing of arguments already raised and briefed by the parties; argument presented by government, which concerned the inappropriateness of using an expert witness to demonstrate that its search for responsive documents under FOIA was inadequate, was a direct response to requester's introduction of an expert's declaration in its reply brief, and government's contention that the use of experts was not appropriate was neither novel nor unexpected in the FOIA context, as would create a truly new issue. [Bigwood v. United States Department of Defense, D.D.C.2015, 132 F.Supp.3d 124. Summary Judgment 🏷️ 282](#)

Grant of leave to allow federal government defendants to file surreply summary judgment brief, and consideration of surreply, was appropriate, in tribal health care facility's action under Indian Self-Determination Education Assistance Act (ISDEAA) seeking to recover contract support costs (CSC); facility raised number of new issues and introduced new evidence in its reply, and facility had full opportunity to respond to surreply. [Navajo Health Foundation-Sage Memorial Hosp., Inc. v. Burwell, D.N.M.2015, 110 F.Supp.3d 1140. Summary Judgment 🏷️ 287](#)

District Court would exercise its discretion to deny requester's motion for leave to file a surreply in response to Social Security Administration's (SSA) summary judgment motion in action under the Privacy Act and the Freedom of Information Act (FOIA), where SSA's reply did not expand the scope of the issues presented and did not submit such new factual information as would deprive requester of a meaningful opportunity to respond. [Crummey v. Social Sec. Admin., D.D.C.2011, 794 F.Supp.2d 46, affirmed 2012 WL 556317, motion for relief from judgment denied 857 F.Supp.2d 117. Summary Judgment 🏷️ 282](#)

Matters discussed in African-American female federal employee's proposed summary judgment surreply were immaterial to resolution of motion, in employee's Title VII action, and thus district court would not grant employee leave to file surreply. [Glass v. Lahood, D.D.C.2011, 786 F.Supp.2d 189, affirmed 2011 WL 6759550. Summary Judgment 🏷️ 287](#)

Plaintiff bringing civil rights action could not supplement his original opposition brief to defendants' motion for summary judgment with a printout of a recent district court decision, and incorporate by reference specific pages of that decision; supplementation would be an

improper sur-reply, as plaintiff's counsel did not seek leave to supplement earlier opposition motion. [Cooper v. Cape May County Bd. of Social Services](#), D.N.J.2001, 175 F.Supp.2d 732. [Summary Judgment](#) 🏷️ 290

Continuance for motion, practice and procedure

Bankruptcy court did not abuse its discretion by denying request by attorney for Chapter 7 debtor, who also was officer of entity he created to receive property from debtor, for continuance of summary judgment motion to conduct discovery on trustee's avoidance claim, since attorney did not provide affidavit or declaration identifying what material facts attorney and entity hoped to discover and how those facts would preclude entry of summary judgment, and even if court had accepted attorney's opposition brief as substitute for affidavit, he did not identify specific facts they hoped to elicit through further discovery, that those facts existed, and that those sought-after facts were essential to oppose summary judgment. [In re O'Gorman](#), C.A.9 2024, 115 F.4th 1047. [Bankruptcy](#) 🏷️ 2164.1; [Bankruptcy](#) 🏷️ 3040.1

Competitor's plan to modify its allegedly infringing process for purifying proteins, for use in development of biopharmaceutical product, did not warrant continuance of competitor's motion for summary judgment on patentee's infringement claim; patent described sequential three-step process involving three solutions, while competitor's method involved only one continuous step and one solution, and competitor's proposed modification, replacing its current separation matrix with new matrix, would not affect that fundamental difference between the two processes. [Amgen Inc. v. Sandoz Inc.](#), N.D.Cal.2017, 295 F.Supp.3d 1062, 126 U.S.P.Q.2d 1147, affirmed 923 F.3d 1023, rehearing granted, modified 776 Fed.Appx. 707, 2019 WL 4165316. [Patents](#) 🏷️ 1937

Continuance of motion for summary judgment was not warranted, in action brought by estate of restaurant worker who was killed during armed robbery at the restaurant against franchisor and franchisees of the restaurant, where, since the motion was filed, worker's estate had opportunity to conduct additional discovery and submit evidence to the District Court, and estate failed to specify that it needed additional discovery by attaching a sworn affidavit. [Estate of Anderson v. Denny's Inc.](#), D.N.M.2013, 987 F.Supp.2d 1113. [Summary Judgment](#) 🏷️ 345

District court would grant senior flight attendant continuance to obtain further discovery at summary judgment stage of age discrimination action against airline employer under disparate treatment theory; flight attendant filed timely request, request indicated that flight attendant sought to question coworkers about a younger flight attendant's dismissal and obtain documentary evidence on same topic, testimony obtained from coworkers and related documentary evidence would have been relevant to flight attendant's opposition to summary judgment, as it could yield evidence relevant to arguments concerning pretext, and there was no reason to infer that evidence sought did not exist. [Kocsis v. Delta Air Lines, Inc.](#), D.Hawaii'i 2013, 963 F.Supp.2d 1002. [Summary Judgment](#) 🏷️ 345

Insureds did not act diligently in opposing insurer's motion for summary judgment in action to determine insurer's duty to defend, weighing in favor of denying insureds' motion to continue insurer's motion for summary judgment; action had been pending for over seven months, during which time the court had continued the motion for summary judgment three times, yet insureds failed to file opposition for summary judgment by deadline or within 20-day extension that they requested after electing to discharge their attorney and proceed pro so. [State Farm Fire & Cas. Co. v. Willison](#), D.Hawaii'i 2011, 833 F.Supp.2d 1200. [Summary Judgment](#) 🏷️ 345

Former Assistant United States Attorney's (AUSA) affidavit in support of his motion for continuance of Department of Justice's (DOJ) motion for summary judgment on his Privacy Act, Rehabilitation Act, and Administrative Procedure Act (APA) claims neither complied with requirements of rule governing such motions nor justified a continuance; affidavit did not state concretely why AUSA could not, absent discovery, present by affidavit facts essential to justify his opposition to summary judgment and omitted specific reasons demonstrating the necessity and utility of discovery to fend off summary judgment, affidavit merely listed facts which he planned to discover, with no authority or explanation for why they were relevant to his claims, and AUSA had already conducted extensive discovery. [Doe v. U.S. Dept. of Justice](#), D.D.C.2009, 660 F.Supp.2d 31. [Summary Judgment](#) 🏷️ 345

A party requesting a continuance of summary judgment proceedings to allow an affidavit to be obtained, depositions to be taken, or other discovery to be undertaken, for purposes of opposing a motion for summary judgment, must identify by affidavit the specific facts that further discovery would reveal, and explain why those facts would preclude summary judgment; failure to comply is proper ground for denying discovery and proceeding to summary judgment. [Munoz v. England, D.Hawaii 2008, 557 F.Supp.2d 1145](#), affirmed in part, vacated in part [630 F.3d 856](#). [Summary Judgment](#) 🏠 345

Continuance of consideration of motion for summary judgment was not warranted, where defendant failed to submit affidavit, and there was no specific identification of relevant evidence which, when available, would foreclose summary judgment. [CNA Ins. Co. v. Lightle, D.Alaska 2005, 364 F.Supp.2d 1068](#). [Summary Judgment](#) 🏠 345

Continuance to allow discovery was unwarranted, in response to summary judgment motion filed by defendant, alleged buyer, in purported seller's action under Perishable Agricultural Commodities Act (PACA) seeking payments allegedly due; in response to alleged buyer's evidence showing that bailment arrangement, rather than sale, existed between parties, purported seller offered only conclusory statement that "[d]iscovery is necessary in order for plaintiff to develop and prove the facts which are essential to oppose the defendants' motion for summary judgment," and purported seller had already been granted two extensions of time to respond to summary judgment motion. [Calavo Growers, Inc. v. Anthony Gagliano Co., Inc., E.D.Wis.2003, 294 F.Supp.2d 1021](#). [Summary Judgment](#) 🏠 345

Non-moving plaintiff failed to show good cause to continue summary judgment motion to take additional discovery to determine whether defendants were alter egos of codefendant, since claim against defendants was derivative of codefendant's liability and District Court had already determined that codefendant was not liable, and he failed to identify specific discovery he needed against defendants. [Bauer v. Interpublic Group of Companies, Inc., N.D.Cal.2003, 255 F.Supp.2d 1086](#). [Summary Judgment](#) 🏠 344

African-American employee of General Accounting Office (GAO) was not entitled to postponement of summary judgment resolution in Title VII action, based on claim that he never received performance evaluations for African-American employees or copies of e-mails he named in his earlier request, and that he wished to secure affidavits from supervisors and to depose another; performance evaluations and affidavits were not requested during discovery, affidavits would not affect resolution of issues regardless, e-mails were sent to employee's counsel several months earlier, and individual whom employee wished to depose had already been deposed by opposing counsel. [Rowland v. Walker, D.D.C.2003, 245 F.Supp.2d 136](#), affirmed [2003 WL 21803321](#), rehearing denied. [Summary Judgment](#) 🏠 344

Insured's motion for a continuance of his life insurer's summary judgment motion was untimely and thus untenable, in the insured's suit alleging misrepresentations in the sale of his "vanishing premium" policy, where he filed it not in conjunction with his brief opposing the summary judgment motion but several weeks later and more than a week after oral argument, and where he did not invoke the rule governing such continuances or request one either in his brief or during oral argument. [In re Northwestern Mut. Life Ins. Co. Sales Practices Litigation, D.N.J.1999, 70 F.Supp.2d 466](#), affirmed [259 F.3d 717](#). [Summary Judgment](#) 🏠 345

Rivet manufacturer was not entitled to continuance of competitor's summary judgment motion in competitor's action for declaratory judgment of trademark invalidity and unenforceability; additional discovery would not have raised genuine issue of material fact as to lack of availability of alternative designs. [Allfast Fastening Systems v. Briles Rivet Corp., C.D.Cal.1998, 16 F.Supp.2d 1154, 47 U.S.P.Q.2d 1170](#). [Summary Judgment](#) 🏠 345

Plaintiffs in premises liability action were not entitled to continuance of defendants' summary judgment motion on ground that they were still seeking legal representation; plaintiffs previously had requested and been given additional time to seek counsel, and they merely asked for continuance without attempting to demonstrate diligence employed in seeking representation. [Owens v. Estate of Erwin, N.D.Tex.1997, 968 F.Supp. 320](#). [Summary Judgment](#) 🏠 345

Employer's summary judgment motion on issue of alleged racially discriminatory conduct by employer would be continued by district court pending former employee's submission of additional evidence and employer's response to allegations of harassment, retaliation, and disparate treatment of airline employees in racial minority group. [Rodriguez v. United Airlines, Inc., N.D.Cal.1992, 812 F.Supp. 1022. Summary Judgment 📄 345](#)

Principal of Chapter 11 debtors was entitled to at least one continuance under summary judgment rule in her adversary proceeding against, inter alia, postpetition lender, given extended nature of underlying bankruptcy proceedings, nature of issues raised or implicated by defendants' summary judgment motion, and recent withdrawal of principal's counsel. [In re Weeks Landing, LLC, M.D.Fla.2010, 439 B.R. 897. Bankruptcy 📄 2164.1](#)

Responsive pleading, practice and procedure

Employer's non-filing of responsive pleading to complaint did not entitle union to summary judgment on basis that employer had accepted allegations of complaint as true; employer timely filed motion to dismiss complaint and was not required to file responsive pleading until court ruled upon pending dismissal motion. [Milk Drivers, Dairy and Ice Cream Employees, Laundry and Dry Cleaning Drivers, Clerical and Allied Workers, Local Union No. 387 v. Roberts Dairy, S.D.Iowa 2003, 219 F.R.D. 151. Summary Judgment 📄 282; Summary Judgment 📄 344](#)

Failure to respond to argument, practice and procedure

Plaintiff minor child of deceased citizen and her legal guardian abandoned claim regarding recklessness of fatal shooting of citizen as she was driving away from police officers after purported traffic violation, since plaintiffs did not respond to municipality's argument that it was entitled to summary judgment under Mississippi Tort Claims Act (MTCA). [K.B. v. Adams, S.D.Miss.2020, 480 F.Supp.3d 746. Summary Judgment 📄 277\(2\); Summary Judgment 📄 290](#)

Failure to respond to motion, practice and procedure--Generally

Even when a nonmoving party chooses the perilous path of failing to submit a response to a summary judgment motion, the district court may not grant the motion without first examining the moving party's submission to determine if it has met its burden of demonstrating that no material issue of fact remains for trial; if it has not, summary judgment is inappropriate, for no defense to an insufficient showing is required. [Amaker v. Foley, C.A.2 \(N.Y.\) 2001, 274 F.3d 677, on remand 2003 WL 21383010. Summary Judgment 📄 282; Summary Judgment 📄 351](#)

District court may not grant motion for summary judgment simply because nonmoving party does not file opposing material, even if failure to oppose violates local rule; however, when local rule does not require, but merely permits courts to grant motion for summary judgment, district court has discretion to determine whether noncompliance should be deemed consent to motion. [Brydges v. Lewis, C.A.9 \(Ariz.\) 1994, 18 F.3d 651. Summary Judgment 📄 282](#)

Discharged employee's failure to respond to former employer's motion for summary judgment on defamation claim justified district court's grant of summary judgment, where former employer denied making statements alleged in employee's complaint. [Abbott v. Gale, C.A.8 \(Neb.\) 1990, 896 F.2d 323. Summary Judgment 📄 282](#)

A magistrate judge did not impermissibly weigh facts in recommending the denial of a borrower's motion for summary judgment on a lender's fraud in the inducement counterclaim by ignoring evidence controverting facts material to the fraud in the inducement claim; the borrower failed to specifically respond and controvert the lender's statement of additional material facts, and the facts stated in the borrower's statement of material fact were either immaterial, or unsupported by the record. [Ross v. Rothstein, D.Kan.2015, 92 F.Supp.3d 1041. Summary Judgment 📄 289](#)

By failing to respond to the summary judgment argument made by a manufacturer of a race car fueling system, a workers compensation insurer for an injured refueler's employer failed to meet its burden of establishing a genuine issue for trial on a "failure to warn" claim under the Ohio Product Liability Act (OPLA). [Jones v. Staubli Motor Sports Div. of Staubli American Corp., S.D.Ohio 2012, 897 F.Supp.2d 599. Products Liability 📄 407; Summary Judgment 📄 244](#)

Prisoner received adequate notice of requirements of summary judgment rule and consequences of failing to respond to summary judgment motion by prison nurse and director, as required for district court to accept truth of factual allegations by nurse and director upon prisoner's failure to respond to their motion for summary judgment on prisoner's § 1983 claims, where notice of motion and court's scheduling order both gave prisoner notice of pendency of motion, need for him to respond, form in which he should respond, and consequences of not responding. [Sheils v. Jordan, W.D.N.Y.2012, 841 F.Supp.2d 727](#). [Summary Judgment](#) 276; [Summary Judgment](#) 282

Former high school teacher's lack of response to summary judgment motion brought by mother of student who engaged in sexual relationship with teacher did not independently justify entry of summary judgment against teacher on mother's substantive due process claims or her battery claims under Pennsylvania law; since mother had burden of proof with respect to her claims, district court had obligation to consider whether "facts specified" in motion entitled her to judgment as matter of law, and under circumstances, proper course of action was to provide teacher, who was incarcerated in connection with her plea of guilty to aggravated indecent assault, with notice of pending motion and renewed opportunity to file response. [Douglas v. Brookville Area School Dist., W.D.Pa.2011, 836 F.Supp.2d 329](#), subsequent determination [2012 WL 94540](#), appeal dismissed. [Summary Judgment](#) 351

District court would accept truth of corrections officers' factual allegations and determine whether officers were entitled to summary judgment in state prisoner's § 1983 action against officers, alleging violation of his constitutional rights in connection with alleged assault upon him by officers; officers' notice of motion, as well as court's scheduling order, gave prisoner ample notice of requirements of summary judgment rule and consequences of failing to respond properly to motion for summary judgment, prisoner was aware of pendency of motion, prisoner failed to respond to motion, and prisoner failed to comply with his responsibility under local rule of civil procedure to keep court apprised of his current mailing address. [Baines v. McGinnis, W.D.N.Y.2011, 766 F.Supp.2d 502](#). [Summary Judgment](#) 276; [Summary Judgment](#) 282

District court could treat as conceded any issues not addressed by discharged employee of District of Columbia Department of Consumer and Regulatory Affairs (DCRA) in his summary judgment opposition brief, in employee's discrimination action against his former employer arising from his summary termination and termination. [Payne v. District of Columbia, D.D.C.2010, 741 F.Supp.2d 196](#), motion to amend denied [808 F.Supp.2d 164](#), affirmed [722 F.3d 345, 406 U.S.App.D.C. 84](#). [Summary Judgment](#) 286

The failure of the non-moving party to respond does not automatically entitle the movant to summary judgment, and the court still is obligated to inquire whether the moving party has met its burden to demonstrate undisputed facts entitling it to summary judgment as a matter of law. [U.S. v. Foley, D.Me.2010, 729 F.Supp.2d 371](#). [Summary Judgment](#) 72; [Summary Judgment](#) 282

Pro se plaintiff's failure to respond to defendants' motion for summary judgment in civil rights case permitted district court to accept truth of defendants' factual allegations, where defendants' notice of motion and court's scheduling order both gave plaintiff notice of consequences of failing to respond properly to motion for summary judgment. [Crenshaw v. Syed, W.D.N.Y.2010, 686 F.Supp.2d 234](#). [Summary Judgment](#) 276; [Summary Judgment](#) 282; [Summary Judgment](#) 291

On a motion for summary judgment, even in the absence of a response from the non-moving party, the moving party still bears the burden of demonstrating its entitlement to judgment as a matter of law. [Winters v. Country Home Products, Inc., D.Mont.2009, 654 F.Supp.2d 1173](#). [Summary Judgment](#) 64; [Summary Judgment](#) 77

If the plaintiff in a copyright infringement case fails to respond, in a motion for summary judgment on issue of disgorgement of profits, by setting forth specific facts showing the existence of a genuine issue for trial, whether that failure is due to the absence of any conceivable connection between the infringement and the claimed revenues, or instead simply due to plaintiff's inability to muster nonspeculative evidence in support of the alleged causal link, then summary judgment may properly be awarded to the infringer with respect to part or all of the contested revenues. [Semerdjian v. McDougal Littell, S.D.N.Y.2009, 641 F.Supp.2d 233](#). [Summary Judgment](#) 176

Even when a plaintiff chooses the perilous path of failing to submit a response to a summary judgment motion, the court may not grant the motion without first examining the moving party's submission to determine if it has met its burden of demonstrating that no material issue of fact remains for trial. [Wesolowski v. Kamas, W.D.N.Y.2008, 590 F.Supp.2d 431](#), reconsideration denied [2009 WL 1505667](#), affirmed [409 Fed.Appx. 476](#), [2011 WL 477583](#). [Summary Judgment](#) 🏠 77; [Summary Judgment](#) 🏠 282; [Summary Judgment](#) 🏠 351

Where party against whom summary judgment is sought fails entirely to respond to motion, court need ensure only that averments in movant's statement of material facts are supported by evidence and show absence of genuine issue for trial. [Morisseau v. DLA Piper, S.D.N.Y.2008, 532 F.Supp.2d 595](#), affirmed [355 Fed.Appx. 487](#), [2009 WL 4432374](#). [Summary Judgment](#) 🏠 282; [Summary Judgment](#) 🏠 289

Copyright owner impliedly conceded argument of advertising agency on summary judgment, that negotiations between advertising agency and copyright owner could not form basis for contributory copyright infringement, by not responding to argument on summary judgment that negotiating, drafting, or holding agreements could not form basis for contributory copyright infringement. [Lucky Break Wishbone Corp. v. Sears, Roebuck & Co., W.D.Wash.2007, 528 F.Supp.2d 1106](#), affirmed [373 Fed.Appx. 752](#), [2010 WL 1391358](#). [Copyrights And Intellectual Property](#) 🏠 1068(3); [Summary Judgment](#) 🏠 176

Despite having been provided with sufficient notice of consequences of failing to comply with mandates of rule governing summary judgment, employer failed to respond to annuity and pension funds' motion for summary judgment, in funds' action seeking to collect delinquent fringe benefit contributions and deductions and to compel employer to produce its books and records for an audit, and, thus, District Court would accept truth of funds' factual allegations in determining whether funds were entitled to judgment as a matter of law, where, rather than filing proof in admissible form, either by affidavit or through documentary evidence, employer merely faxed court an unsworn, one-page letter objecting to entry of summary judgment. [Iron Workers District Council of Western New York v. D.C. Scott, Inc., W.D.N.Y.2007, 474 F.Supp.2d 467](#). [Summary Judgment](#) 🏠 282; [Summary Judgment](#) 🏠 286

Where employee bringing pro se discrimination action had not responded to employer's motion for summary judgment despite having been given more than adequate notice of nature of motion and consequences of his failure to respond thereto, court would not simply grant motion automatically but would accept truth of employer's factual allegations and determine whether employer was entitled to summary judgment. [Gustin v. Potter, W.D.N.Y.2007, 474 F.Supp.2d 460](#). [Summary Judgment](#) 🏠 282

Court did not have to decide whether alien's claim under Connecticut law against prior attorney in immigration matter sounded in tort or contract, where subsequent counsel for alien did not address issue in memorandum in opposition to summary judgment, or in other than conclusory fashion at oral argument. [Palmer v. Sena, D.Conn.2007, 474 F.Supp.2d 347](#), reconsideration denied [474 F.Supp.2d 353](#). [Summary Judgment](#) 🏠 290

When no opposition to a motion for summary judgment is filed and the moving papers themselves are sufficient to show that no genuine issue of fact exists, the District Court may grant summary judgment. [Davies v. Valdes, C.D.Cal.2006, 462 F.Supp.2d 1084](#). [Summary Judgment](#) 🏠 77; [Summary Judgment](#) 🏠 80

Diversity plaintiffs' unqualified failure to respond to defense motion for summary judgment on punitive damages claim was fatal to such claim, even though applicable state substantive law had relieved plaintiffs of burden of presenting additional evidence to rebut hypothesis of innocent conduct; federal summary judgment rule specifically provides that judgment shall be entered against adverse party if that party does not respond, and local rule made nonmovant's obligations explicit. [Rogers v. Ford Motor Co., N.D.Ind.1996, 925 F.Supp. 1413](#). [Summary Judgment](#) 🏠 282

It was within court's power to grant plaintiffs' summary judgment motion on sole ground that defendants had failed to make any response. [Byrd v. Brandenburg, N.D.Ohio 1996, 922 F.Supp. 60](#). [Summary Judgment](#) 🏠 282; [Summary Judgment](#) 🏠 351

Failure of party to respond to motion for summary judgment does not automatically entitle moving party to summary judgment; if movant has not satisfied initial burden, opponent need not respond at all, but if movant has met burden, opponent cannot survive motion by resting on mere allegations of pleadings. [Nationwide Mut. Fire Ins. Co. v. Mitchell By and Through Seymour](#), S.D.Miss.1995, 911 F.Supp. 230. [Summary Judgment](#) 🔑 77; [Summary Judgment](#) 🔑 95

If party who seeks summary judgment fails to meet its strict burden of proof, summary judgment cannot be entered even if opposing party fails to respond to motion. [Kaufman v. Cserny](#), S.D.Ill.1994, 856 F.Supp. 1307. [Summary Judgment](#) 🔑 77

Even though nonmovant had not responded within 20 days after service to summary judgment motion as she was required to do by local rules, district court still had to determine whether movant had demonstrated absence of triable issue of fact and entitlement to judgment as matter of law. [Van Leeuwan v. Nuzzi](#), D.Colo.1993, 810 F.Supp. 1120. [Summary Judgment](#) 🔑 284; [Summary Judgment](#) 🔑 351

---- Default judgment, failure to respond to motion, practice and procedure

Corporate manager of benefit plan could not obtain default judgment against plan participant's wife, in its ERISA action seeking recovery of funds that had been received from third party as result of participant's automobile accident and then paid to participant's former wife pursuant to decree of divorce, even though corporate manager's motion for entry of judgment by default requested that constructive trust be impressed upon the funds, and even though corporate manager sought to proceed in a narrow sense on motion for default judgment for former wife's failure to answer amended complaint, where corporate manager was also seeking summary judgment against former wife as one of the defined "Defendants" in its motion for summary judgment, the two documents were filed in District Court at the same time and thus would be construed as inextricably interwoven, and former wife's failure, as non-movant, to respond to motion for summary judgment did not entitle corporate manager, as movant, to default judgment. [ACS Recovery Services, Inc. v. Griffin](#), E.D.Tex.2011, 784 F.Supp.2d 694, affirmed 676 F.3d 512, rehearing en banc granted 687 F.3d 659, on rehearing en banc 723 F.3d 518, certiorari denied 134 S.Ct. 618, 571 U.S. 1010, 187 L.Ed.2d 400. [Federal Civil Procedure](#) 🔑 2416

Federal agencies did not default as result of their failure to respond to requestor's motion for summary judgment in action brought pursuant to Freedom of Information Act (FOIA), where requestor filed motion before agencies had been served, and court denied requestor's motion, without prejudice, and ordered clerk to issue summonses for agencies in order for United States Marshals Service to effect service of complaint. [Jones v. U.S. Dept. of Justice](#), D.D.C.2009, 601 F.Supp.2d 297. [Summary Judgment](#) 🔑 282

Debt collectors failed to respond to consumer's motion for partial summary judgment in consumer's action alleging violations of the Fair Debt Collection Practices Act (FDCPA), warranting summary judgment by default against debt collectors, where debt collectors were afforded adequate time to oppose the motion, but failed to do so. [Larsen v. JBC Legal Group, P.C.](#), E.D.N.Y.2008, 533 F.Supp.2d 290. [Summary Judgment](#) 🔑 282

Abandonment of claims, practice and procedure

Fee owner and its lessee did not abandon breach of contract, intentional interference with economic relations, unjust enrichment, quiet title claims by proposing dismissal of those claims as "moot" if district court granted summary judgment in their favor on rescission and partial declaratory relief counts of complaint, since operative motion expressly made withdrawal contingent on different outcome and counsel diligently resisted district court's turn toward abandonment at every step once misunderstanding was revealed. [LKL Associates, Inc. v. Union Pacific Railroad Company](#), C.A.10 (Utah) 2021, 17 F.4th 1287. [Summary Judgment](#) 🔑 277(2)

Union abandoned its sole redressable § 1983 claim, that village violated union's First Amendment rights by denying union's request to protest on property of village-owned hotel, by arguing on motion for summary judgment only that village prohibited union from distributing pamphlets at hotel after union brought § 1983 action; in presenting facts pertinent to motion, union discussed only post-complaint pamphletting incident, for which union could not seek redress without supplementing or amending complaint. [Chicago Regional Council of Carpenters v. Village of Schaumburg](#), C.A.7 (Ill.) 2011, 644 F.3d 353. [Summary Judgment](#) 🔑 277(2)

Owner of property on which hotel was constructed abandoned claim for contractual indemnification against subcontractor for costs and payments made in conjunction with a settlement agreement in separate state court action by injured worker; absent from owner's opposition to subcontractor's cross-motion for summary judgment was any reference to subcontractor's argument that contractual indemnification claim should be dismissed, and owner conceded in letter following filing of motion that discovery revealed that its claim for contractual indemnification was not supported. [AVA Realty Ithaca, LLC v. Griffin, N.D.N.Y.2023, 652 F.Supp.3d 255](#), appeal withdrawn [2023 WL 4409998](#). [Summary Judgment](#) 📌 286

Emergency medical technicians (EMT) abandoned, at summary judgment stage, claim that city and fire department's commissioner and assistant commissioner deprived them of constitutionally protected property rights in their employment in violation of Due Process Clause of Fourteenth Amendment, where EMTs did not address alleged property interests or any associated deprivation of due process in brief in opposition to defendants' motion for summary judgment, instead focusing on alleged First Amendment liberty interest, including inadequacy of post-deprivation remedies, and focus of arguments in EMTs briefing on their own motion for partial summary judgment was deprivation of liberty interest in violation of due process. [Barzilay v. City of New York, S.D.N.Y.2022, 610 F.Supp.3d 544](#). [Summary Judgment](#) 📌 277(2); [Summary Judgment](#) 📌 290

Former patient at university hospital, his wife, and his children abandoned their state law negligence claims, any due process claims, and any claims brought by patient, at summary judgment stage in action under § 1983, New York constitution, and New York law, related to incident in which university police officers forcibly prevented patient from leaving hospital and arrested his wife and children when they tried to intervene; plaintiffs failed to mount a defense against the facially valid arguments for dismissal that were advanced by officers in their opening brief seeking summary judgment, as they made no mention of those claims in their opposition to summary judgment. [Moore v. Keller, N.D.N.Y.2020, 498 F.Supp.3d 335](#). [Summary Judgment](#) 📌 286

High school student abandoned his § 1983 First Amendment freedom of association claim, arising from high school's decision to bar him from participating in second night of school-sponsored variety show after unapproved comment he made during show's opening night, upon defendants' motion for summary judgment, where student failed to oppose defendants' motion for summary judgment with regard to that claim. [Vetrano v. Miller Place Union Free School District, E.D.N.Y.2019, 369 F.Supp.3d 462](#). [Summary Judgment](#) 📌 286

Parents of pretrial detainee, who committed suicide in county prison's medical department restroom, abandoned their § 1983 claim that prison medical provider failed to provide adequate policies and procedures for identifying and treating persons who were high suicide risks in effort to save money, where parents did not address that claim in their opposition to summary judgment. [Carroll v. Lancaster County, E.D.Pa.2018, 301 F.Supp.3d 486](#). [Summary Judgment](#) 📌 277(2); [Summary Judgment](#) 📌 286

Property owners' § 1983 Fourth Amendment and state-law conversion claims arising from officers' alleged involvement in the wrongful removal of a forklift truck from their property would be deemed abandoned, for summary judgment purposes, where owners did not address those claims in their opposition memorandum. [Zitta v. Graham, D.Vt.2014, 996 F.Supp.2d 272](#). [Summary Judgment](#) 📌 286

Insofar as federal employee's amended complaint could be construed to assert Title VII hostile work environment claim on basis of retaliation, employee abandoned such claim, where her summary judgment opposition neither addressed that argument nor discussed legal standards governing hostile work environment claims. [Payne v. Salazar, D.D.C.2012, 899 F.Supp.2d 42](#). [Summary Judgment](#) 📌 286

Dredging general contractor abandoned affirmative defenses to subcontractor's New York-law breach of contract claim, asserting that subcontractor breached contract by failing to provide sufficient number of skilled employees and working equipment and that subcontractor warranted specific rate for its dredging work, by disputing subcontractor's summary judgment motion in responding memorandum only to extent subcontractor's motion applied to general contractor's counterclaims, but failing to dispute subcontractor's motion insofar as it challenged general contractor's affirmative defenses as unsupported by terms of contract and general contractor's own actions. [L.W. Matteson, Inc. v. Severson](#)

[Environmental Services, Inc., W.D.N.Y.2011, 831 F.Supp.2d 608. Summary Judgment 286](#)

State inmate abandoned claims that prison officials were deliberately indifferent to his serious medical needs, in violation of Eighth Amendment, when they delayed in providing him with new eyeglasses, failed to provide him with a medically recommended diet, and ignored his requests for sick call, since inmate did not oppose prison officials' motion for summary judgment on claims. [Davidson v. Desai, W.D.N.Y.2011, 817 F.Supp.2d 166. Summary Judgment 286](#)

Government did not abandon its residue violation claims by deciding not to pursue them on summary judgment in government's action seeking injunction against dairy and beef farm operator under FDCA; parties agreed pursuant to status conference that if government proceeded on general observations obtained from site inspections, parties would forego discovery, but if government sought to investigate drug residue in specific animals, parties would then engage in discovery. [U.S. v. Rhody Dairy, L.L.C., W.D.Wash.2011, 812 F.Supp.2d 1239. Summary Judgment 277\(2\)](#)

Failure to warn claim, brought by operator of wood moulding machine whose fingers had been partially amputated while using moulder, against manufacturer of the machine, had been abandoned where operator failed to argue in opposition to manufacturer's motion for summary judgment; operator's entire argument in opposition to summary judgment had been limited to a single sentence in support of design defect claim, so it was clear that he intended to abandon it. [Wick v. Wabash Holding Corp., W.D.N.Y.2011, 801 F.Supp.2d 93. Summary Judgment 277\(2\); Summary Judgment 290](#)

Discharged public school employee abandoned his § 1983 civil conspiracy claim against school defendants arising from his termination by failing to respond, in his summary judgment opposition brief, to defendants' argument that such claim could not stand. [Mignault v. Ledyard Public Schools, D.Conn.2011, 792 F.Supp.2d 289. Summary Judgment 286](#)

Health care center's former chief executive officer (CEO) abandoned False Claims Act (FCA) claims against center that were unrelated to alleged conflict of interest, where former CEO failed to address claims in her response to center's motion for summary judgment. [U.S. ex rel. Parato v. Unadilla Health Care Center, Inc., M.D.Ga.2011, 787 F.Supp.2d 1329. Summary Judgment 286](#)

Administratrix of estate of pretrial detainee abandoned state law claims against police officers and boroughs for battery, wrongful death, and indemnification, where administratrix failed to address defendants' arguments against claims in her response to motion for summary judgment. [Nykiel v. Borough of Sharpsburg, W.D.Pa.2011, 778 F.Supp.2d 573. Summary Judgment 286](#)

Discharged employee of Federal Deposit Insurance Corporation (FDIC) abandoned on summary judgment his discrimination claims under Title VII, Rehabilitation Act, and Age Discrimination in Employment Act (ADEA) by failing to address those claims in his opposition papers. [Monachino v. Bair, S.D.N.Y.2011, 769 F.Supp.2d 431, affirmed 481 Fed.Appx. 20, 2012 WL 4354660. Summary Judgment 277\(2\); Summary Judgment 286](#)

On motion for summary judgment, mortgagors were deemed to have abandoned or withdrawn breach of fiduciary duty claim against mortgage broker that was based on theory that mortgagors' tax preparer acted as broker's agent, and that tax preparer's alleged fiduciary duty to mortgagors could thus be imputed to broker, where mortgagors did not respond in their opposition papers to broker's arguments that tax preparer was not its agent. [Iannuzzi v. American Mortg. Network, Inc., E.D.N.Y.2010, 727 F.Supp.2d 125. Summary Judgment 286](#)

Former public employee abandoned her claim alleging that her supervisor and officials of state Department of Corrections (DOC) terminated employee from her position as registered nurse at correctional facility in violation of Fourteenth Amendment; employee failed to address claim in her brief in opposition to defendants' motion for summary judgment. [Cicchiello v. Beard, M.D.Pa.2010, 726 F.Supp.2d 522, affirmed 458 Fed.Appx.](#)

117, 2012 WL 169127, certiorari denied 133 S.Ct. 162, 568 U.S. 820, 184 L.Ed.2d 34.
[Summary Judgment](#) 📄 286

Environmental organizations did not abandon claims under National Forest Management Act (NFMA), Federal Land Policy and Management Act (FLPMA), and Endangered Species Act (ESA) by moving for summary judgment only on National Environmental Policy Act (NEPA) claims; organizations, in their supporting declarations, alerted Court to correspondence between counsel that gave organizations reasonable understanding that moving for partial summary judgment on their NEPA claims alone would not terminate their ability to seek relief on their other claims. [Conservation Northwest v. Rey](#), W.D.Wash.2009, 674 F.Supp.2d 1232, appeal dismissed. [Summary Judgment](#) 📄 63

Federal courts may deem claim abandoned when party moves for summary judgment on one ground and party opposing summary judgment fails to address argument in any way. [Maher v. Alliance Mortg. Banking Corp.](#), E.D.N.Y.2009, 650 F.Supp.2d 249. [Summary Judgment](#) 📄 286

Claim that was not raised at pleading stage was not properly before court when raised for first time in response to motion for summary judgment. [Coachmen Industries, Inc. v. Willis of Illinois, Inc.](#), S.D.Tex.2008, 565 F.Supp.2d 755, reconsideration denied 2008 WL 11388682. [Summary Judgment](#) 📄 282

White male correctional officers were deemed to have abandoned their claim against Texas Department of Criminal Justice (TDCJ) for disparate treatment racial discrimination where, in their response to TDCJ's summary judgment motion, they did not address any such potential cause of action. [Beaumont v. Texas Dept. of Criminal Justice](#), E.D.Tex.2006, 468 F.Supp.2d 907. [Summary Judgment](#) 📄 286

In employment discrimination case, employee's claims under state law for intentional infliction of emotional distress and negligent retention, not addressed in opposition to employer's motion for summary judgment, were deemed abandoned. [Boex v. OFS Fitel, LLC](#), N.D.Ga.2004, 339 F.Supp.2d 1352. [Summary Judgment](#) 📄 277(2)

Race discrimination claims not addressed in employee's brief in response to employer's summary judgment motion were deemed abandoned. [Wu v. Southeast-Atlantic Beverage Corp.](#), N.D.Ga.2004, 321 F.Supp.2d 1317. [Summary Judgment](#) 📄 290

Employee's discrimination claims against employer could be considered abandoned to extent that employee did not address them in his response to employer's motion for summary judgment. [Campbell v. Meredith Corp.](#), D.Kan.2003, 260 F.Supp.2d 1087, review denied 2003 WL 21302952. [Summary Judgment](#) 📄 286

In considering employer's motion for summary judgment, district court would assume that age discrimination plaintiff had abandoned her failure to rehire claim as separate ground for recovery, where complaint identified employer's failure to rehire as basis upon which plaintiff alleged discrimination, but plaintiff failed to brief rehiring claim as separate and distinct claim, and employer's counsel represented to court that plaintiff's counsel had stated in open court that action was not failure to rehire case. [Tibbitts v. Van Den Bergh Foods Co., a Div. of Conopco, Inc.](#), N.D.Ill.1994, 859 F.Supp. 1168. [Summary Judgment](#) 📄 286; [Summary Judgment](#) 📄 290

Waiver, practice and procedure

When a party confronted with a summary judgment motion does not invoke the federal rule of civil procedure allowing a party opposing summary judgment to delay a ruling on the motion to conduct additional discovery, under certain circumstances, through an affidavit or some similarly authoritative proffer, he relinquishes any right to challenge the subsequent entry of summary judgment on the basis of insufficient factual development. [Faiella v. Federal National Mortgage Association](#), C.A.1 (N.H.) 2019, 928 F.3d 141. [Summary Judgment](#) 📄 344

Plaintiff waived on appeal from grant of summary judgment in favor of defendant in employment discrimination action her argument that district court abused its discretion in ruling that she violated local rules when she filed her opposition to summary judgment, where plaintiff provided only perfunctory statement regarding that issue in her appellate brief. [Martinez-Burgos v. Guayama Corp.](#), C.A.1 (Puerto Rico) 2011, 656 F.3d 7. [Federal Courts](#) 📄 3733

Prisoner waived argument that he was entitled to a continuance to conduct further discovery before a ruling was issued on prison employees' motions for summary judgment in his civil rights suit, where prisoner did not move for a continuance before the magistrate judge, but instead filed his motion in the district court after the magistrate judge filed his report and recommendation that summary judgment be granted in favor of employees.

[Abdulhaseeb v. Calbone, C.A.10 \(Okla.\) 2010, 600 F.3d 1301](#), certiorari denied [131 S.Ct. 469, 562 U.S. 967, 178 L.Ed.2d 298](#). [United States Magistrate Judges](#) 📌 230(2)

Terminated state university professor waived any argument that university's board of trustees waived its immunity from his retaliation and discrimination suit under Eleventh Amendment, where professor failed to raise such argument in opposition to board's motion for summary judgment. [Satcher v. University of Arkansas at Pine Bluff Bd. of Trustees, C.A.8 \(Ark.\) 2009, 558 F.3d 731](#). [Federal Courts](#) 📌 3418(2)

Failure to oppose a basis for summary judgment constitutes waiver of that argument. [Satcher v. University of Arkansas at Pine Bluff Bd. of Trustees, C.A.8 \(Ark.\) 2009, 558 F.3d 731](#). [Summary Judgment](#) 📌 277(2); [Summary Judgment](#) 📌 290

District court erred in sua sponte dismissing union funds' action against employer for ERISA contributions for improper venue, based on existence of arbitration clause, where arbitration agreement was between union and employer rather than funds and employer, and, even if such agreement somehow carried over to funds, employer implicitly waived any argument for dismissing because of venue or arbitration when it moved for summary judgment without mentioning those grounds. [Automobile Mechanics Local 701 Welfare and Pension Funds v. Vanguard Car Rental USA, Inc., C.A.7 \(Ill.\) 2007, 502 F.3d 740](#). [Labor And Employment](#) 📌 665

Oral argument on summary judgment motion is deemed waived when opposing party does not request it. [Deutsch v. Burlington Northern R. Co., C.A.7 \(Ill.\) 1992, 983 F.2d 741](#), rehearing denied, certiorari denied [113 S.Ct. 1845, 507 U.S. 1030, 123 L.Ed.2d 470](#). [Summary Judgment](#) 📌 341

Opposing party's failure to make motion to strike generally waives any defect in affidavit supporting summary judgment motion. [Sellers v. M.C. Floor Crafters, Inc., C.A.2 \(N.Y.\) 1988, 842 F.2d 639](#). [Summary Judgment](#) 📌 330

In respect to the government's motion for summary judgment in consolidated actions for refund of federal income taxes, there was no waiver by plaintiff taxpayers of the requirements of this rule pertaining to summary judgment, where counsel for the taxpayers made continuing protest after the trial judge indicated to all concerned that he was going to grant summary judgment. [Dolese v. U.S., C.A.10 \(Okla.\) 1976, 541 F.2d 853](#). [Summary Judgment](#) 📌 238

Party does not waive any right to assert a claim merely by making a motion for summary judgment when an issue of fact is clearly presented by the pleadings. [Tomalewski v. State Farm Life Ins. Co., C.A.3 \(Pa.\) 1974, 494 F.2d 882](#). [Summary Judgment](#) 📌 58

Defendants did not waive their motion for summary judgment by filing and serving their answer subsequent to filing of summary judgment motion. [Jefferson v. Asplund, C.A.9 \(Alaska\) 1972, 467 F.2d 199](#). [Summary Judgment](#) 📌 57

Where plaintiff's motion for summary judgment, which had been pending more than three months, was not called to trial court's attention until case was called for regular trial on merits, both sides announced ready, and plaintiff's counsel swore himself as a witness and was examined, motion for summary judgment was waived by plaintiff. [Woods v. Robb, C.A.5 \(Tex.\) 1948, 171 F.2d 539](#). [Summary Judgment](#) 📌 292

Estate of arrestee who died while in police custody waived § 1983 claims, in opposition to defendant's motion for summary judgment, that arrestee's Fifth Amendment rights were violated due to denial of medical care and denial of protection from harm, where estate's responses to defendant's interrogatories indicated that Fifth Amendment rights were not violated, and plaintiff's opposition to summary judgment failed to respond to defendant's arguments on the Fifth Amendment claim. [Hayes v. District of Columbia, D.D.C.2013, 923 F.Supp.2d 44](#). [Civil Rights](#) 📌 1429; [Summary Judgment](#) 📌 115

Pretrial order in Resource Conservation and Recovery Act (RCRA) action arising from contamination of waste-management facility did not preserve plaintiff's piercing-the-corporate-veil theory of recovery against corporate defendant, and thus plaintiff waived that theory for summary judgment purposes; pretrial order only alleged defendant's liability for acts of its predecessors in interest, which was different than liability imposed by piercing corporate veil, and neither reference to "corporate structure" by plaintiff's deposed witness nor reference to relationship between plaintiff and one of defendant's predecessors in interest by plaintiff's lawyer was sufficient to put defendant on notice of piercing-the-corporate-veil theory. [Clean Harbors, Inc. v. CBS Corp., D.Kan.2012, 875 F.Supp.2d 1311. Federal Civil Procedure](#) 📌 1942

Apartment residents waived, for summary judgment purposes, their § 1983 claim that town used excessive force in executing search order for their apartment in connection with drug investigation targeting one resident's father, who was probationer, by offering no response, legal or otherwise, to town's contention that claim was without merit. [Bowen v. County of Westchester, S.D.N.Y.2010, 706 F.Supp.2d 475. Summary Judgment](#) 📌 282

Even if former borough employee had meant to assert Title VII discrimination claim against his former employer in his amended complaint, his failure to brief that claim in opposition to summary judgment or otherwise come forward with evidence to support claim constituted waiver of that claim entitling defendants to summary judgment. [Rife v. Borough of Dauphin, M.D.Pa.2009, 647 F.Supp.2d 431. Summary Judgment](#) 📌 290

Mentally challenged suspect's guardian waived any "wrongful arrest" ADA claim against city arising from incident in which officer knocked suspect to ground, where guardian failed to mention ADA or allude to its elements in complaint, and did not raise ADA theory until responding to motion for summary judgment. [Steeves v. City of Rockland, D.Me.2009, 600 F.Supp.2d 143. Summary Judgment](#) 📌 286

Equipment operator waived his claims against manufacturer of digger derrick alleging manufacturing and marketing defects and breach of express or implied warranties of safety when operator did not raise or brief issues related to those claims in his response to manufacturer's motion for summary judgment. [Whitmire v. Terex Telelect, Inc., E.D.Tex.2005, 390 F.Supp.2d 540. Summary Judgment](#) 📌 290

Ambulance manufacturer forfeited its "just cause" defense at summary judgment stage of distributor's action against manufacturer alleging violations of Puerto Rico Dealers Act, where manufacturer did not include the defense in its summary judgment motion. [Re-Ace, Inc. v. Wheeled Coach Industries, Inc., D.Puerto Rico 2005, 364 F.Supp.2d 163. Summary Judgment](#) 📌 286

Employee did not, on employer's summary judgment motion, waive her retaliation claim under Maine Human Rights Act (MHRA) by failing to respond directly to employer's argument that it could not have cut her hours in retaliation for her age discrimination claim because it began cutback before complaint was filed; by raising genuine issue of material fact as to when she first complained of age discrimination, employee contradicted underlying factual premise of employer's retaliation argument and thereby responded indirectly thereto. [Ricci v. Applebee's Northeast, Inc., D.Me.2004, 301 F.Supp.2d 51. Summary Judgment](#) 📌 117(1)

Former employee's failure to file a response to employer's motion for summary judgment on his employment discrimination claims would result in a waiver of his right to file a response, where employee not only failed to file a timely response to employer's motion for summary judgment, but he did not seek an extension until time had expired without showing grounds for excusable neglect, and then misrepresented that employer's counsel had consented to an extension of time for filing his response. [Shoaf v. Kimberly-Clark Corp., M.D.N.C.2003, 294 F.Supp.2d 746. Summary Judgment](#) 📌 284; [Summary Judgment](#) 📌 292

Borough waived right to complain, following jury verdict in favor of police officer, of officer's alleged failure to exhaust administrative remedies prior to bringing Title VII action, where borough failed to raise such claim in front of the agency, in motion to dismiss, and in motion for summary judgment. [O'Bar v. Borough of Naugatuck, D.Conn.2003, 260 F.Supp.2d 514. Civil Rights](#) 📌 1519

Female employee did not waive her objections to consideration of her employer's motion for summary judgment by responding in substance to the employer's motion while seeking continuance of the proceeding pending further discovery, in Title VII action for alleged pregnancy discrimination. [Chernova v. Electronic Systems Services, Inc., D.Md.2003, 247 F.Supp.2d 720. Summary Judgment](#) 📌 345

When no opposition is filed to a summary judgment motion, the nonmoving party waives the right to object to the material facts set forth by the movant and the motion will be decided on the basis of the movant's submissions. [Modesto v. Lehman, D.Puerto Rico 2002, 245 F.Supp.2d 340. Summary Judgment](#) 📌 282

Taxpayer who failed to respond to government's motion for protective order staying all discovery propounded against government in suit challenging tax levy waived right to assert motion for continuance in response to government's alternative motion for summary judgment. [Knight v. U.S., D.Ariz.1993, 845 F.Supp. 1372, affirmed 77 F.3d 489, certiorari denied 117 S.Ct. 238, 519 U.S. 894, 136 L.Ed.2d 168. Summary Judgment](#) 📌 345

For purposes of summary judgment motion, plaintiff in age discrimination action waived objections to certain evaluation figures used by his employer where he did not challenge figures at time of his performance evaluations. [Caruso v. Peat, Marwick, Mitchell & Co., S.D.N.Y.1991, 765 F.Supp. 144. Summary Judgment](#) 📌 292

Genuine issue of material fact existed as to whether government contractor had waived its claims for particular segment closing adjustments based on novation agreements into which it had entered with government and buyers of each segment, precluding summary judgment in contractor's action against United States, claiming that post-retirement benefit (PRB) plans, otherwise known as employee welfare benefit plans, under ERISA, were subject to segment closing adjustment under cost accounting standard (CAS). [Raytheon Co. v. U.S., Fed.Cl.2011, 96 Fed.Cl. 548. United States](#) 📌 1061(2)

Objections, practice and procedure

Even if documents underlying claim of fraud in connection with sale of oil and gas limited partnership interests were not presented in compliance with this rule, they would support summary judgment in absence of objection to their use. [Townsend v. Columbia Operations, C.A.9 \(Cal.\) 1982, 667 F.2d 844. Summary Judgment](#) 📌 203

Plaintiffs' objections on summary judgment motion to facts as proffered by defendant were defective, pursuant to local rule, due to inadequate contradiction of defendant's averments, since plaintiff raised in generalized fashion legal and evidentiary objections either to admissibility of facts or to proposed inferences to be derived from such facts. [Moeller Tevez v. Allmerica Financial Life Ins. and Annuity Co., D.Puerto Rico 2008, 534 F.Supp.2d 253. Summary Judgment](#) 📌 292

Although total waiver of objection to motion for summary judgment is not imposed under local rule, party who fails to object in timely fashion to motion is deemed to have consented to moving party's statement of facts to extent that statement is supported by appropriate record citations. [Redman v. F.D.I.C., D.Me.1992, 794 F.Supp. 20. Summary Judgment](#) 📌 284; [Summary Judgment](#) 📌 289

Although local rule that party who fails to file timely objection to motion is deemed to have waived objection does not impose total waiver of objection to motion for summary judgment, party who fails to object in timely fashion is deemed to have consented to moving party's statement of facts to extent that statement is supported by appropriate record citations. [F.D.I.C. v. Bandon Associates, D.Me.1991, 780 F.Supp. 60. Summary Judgment](#) 📌 284

District court is required to examine merits of motion for summary judgment even though nonmoving party fails to contest assertions of fact maintained by movant to be undisputed. [New Maine Nat. Bank v. Reef, D.Me.1991, 765 F.Supp. 27. Summary Judgment](#) 📌 289

Concessions, practice and procedure

One stray statement during argument at summary judgment hearing by contractor's counsel was insufficient to constitute binding judicial concession that slab runners did not present a Level 3 nonconformity, in contractor's action against subcontractors for breach of contract and indemnity; contractor expressly argued that slab runners presented Level 3 nonconformity in its papers filed in district court, statement during hearing was, at most,

argument made in the alternative or assertion that slab runners presented at least Level 2 nonconformity, and district court never questioned counsel about whether contractor was abandoning position asserted in its papers. [W. C. English, Inc. v. Rummel, Klepper & Kahl, LLP, C.A.4 \(Va.\) 2019, 934 F.3d 398. Summary Judgment 🏠 290](#)

Local rule allowing court to treat a motion as conceded when there is no response or a brief in opposition effects a waiver of the right of an opponent of summary judgment motion to controvert the facts asserted by the moving party in the motion for summary judgment or the supporting material accompanying it. [Anchorage Associates v. Virgin Islands Bd. of Tax Review, C.A.3 \(Virgin Islands\) 1990, 922 F.2d 168. Summary Judgment 🏠 292](#)

Party making concession for purposes of its summary judgment motion was not bound by concession after such motion was rejected by court of appeals. [General Acc. Fire and Life Assur. Corp., Ltd. v. Akzona, Inc., C.A.4 \(N.C.\) 1980, 622 F.2d 90. Federal Courts 🏠 3794](#)

Elementary school principal conceded issue of whether school district officials imposed prior restraint on her freedom to speak on issues of public concern by prohibiting her from filing a suit in a court of law, in opposition to motion for summary judgment in principal's § 1983 action against officials, alleging that restrictions officials placed on her regarding her placement on administrative leave violated her right to free speech; principal did not appear to have had any problems filing the action at issue or making Freedom of Information Act (FOIA) requests from district and city board of education, and principal, in her response to defendants' motion for summary judgment, did not address defendants' argument that her allegations were unsupported by the record. [Blick v. Ann Arbor Public School District, E.D.Mich.2023, 674 F.Supp.3d 400, affirmed 105 F.4th 868. Summary Judgment 🏠 286](#)

Surety was entitled on motion for summary judgment to recover \$9,939.48 on its claim for indemnification under New York law in connection with indemnitors' alleged failure to pay premium on bond through submission of invoice in amount of \$5,716.22, where indemnitors conceded the point by failing to oppose surety's motion with respect to that claim. [Colonial Surety Company v. A&R Capital Associates, E.D.N.Y.2017, 420 F.Supp.3d 38. Summary Judgment 🏠 286](#)

Telemarketing corporations and their principals' opposition to Federal Trade Commission's (FTC) motion for summary judgment on claims for violation of FTC Act and Telemarketing Sales Rule (TSR) failed to address, much less contradict, any facts set forth in FTC's statement of undisputed material facts (SUMF), and thus, corporations and principals conceded those facts, even though their opposition included declaration from co-defendant and deposition excerpt from co-owner of corporation, since none of information contained in declaration and deposition excerpt was inconsistent with SUMF. [Federal Trade Commission v. Pointbreak Media, LLC, S.D.Fla.2019, 376 F.Supp.3d 1257. Summary Judgment 🏠 289](#)

Consumer conceded bank's entitlement to judgment as a matter of law, on bank's motion for summary judgment in consumer's action asserting claim under California's Unfair Competition Law (UCL) prohibiting fraudulent business practices, relating to bank's involvement in debt settlement enterprise, where consumer's response to the motion did not address bank's arguments concerning the claim under UCL's fraudulent practices prong and instead addressed only arguments concerning consumer's claims under UCL's unlawfulness and unfairness prongs, and consumer did not provide any evidence that would be relevant to defeating summary judgment on claim under UCL's fraudulent practices prong. [Newton v. American Debt Services, Inc., N.D.Cal.2014, 75 F.Supp.3d 1048. Summary Judgment 🏠 282](#)

Teacher conceded her substantive due process claim against parish school board, board's former superintendent, and principal, where teacher failed to oppose defendants' motion for summary judgment on due process claim in her opposition brief as required by local rule. [Goudeau v. East Baton Rouge Parish School Bd., M.D.La.2012, 951 F.Supp.2d 874, affirmed in part, reversed in part and remanded 540 Fed.Appx. 429, 2013 WL 5514548. Summary Judgment 🏠 286](#)

Federal employee conceded her Title VII race discrimination claims based on her non-selection for promotion, denial of telework requests, and suspension by failing to discuss in her summary judgment opposition how those alleged actions were racially discriminatory. [Byrd v. Vilsack, D.D.C.2013, 931 F.Supp.2d 27. Summary Judgment 🏠 286](#)

Owner of oil and gas leases conceded that its claim against subcontractor for breach of implied warranty of merchantability was not cognizable under Texas law, on basis that warranty provisions of Uniform Commercial Code (UCC) necessary to support its claim did not apply and that terms and conditions of field estimate for subcontractor's completion of fracture stimulation job disclaimed any implied warranties, where owner had failed to respond to subcontractor's arguments or present any contrary evidence on subcontractor's motion for summary judgment. [Crest Resources, Inc. v. Dan Blocker Petroleum Consultants, Inc., N.D.Okla.2012, 865 F.Supp.2d 1113. Summary Judgment 🏠 203](#)

On agency's motion for summary judgment in Freedom of Information Act (FOIA) action, court would treat requestor's factual assertions in its cross-statement of material facts not in dispute as conceded, where requestor had defied court's clear and unambiguous instructions in scheduling order by failing to controvert agency's factual assertions in the manner prescribed; requestor failed to respond to each factual assertions with a correspondingly numbered paragraph and failed to specifically identify which parts were admitted and which were denied. [Skybridge Spectrum Foundation v. F.C.C., D.D.C.2012, 842 F.Supp.2d 65. Summary Judgment 🏠 229](#)

District court, in reviewing summary judgment motion in Title VII retaliation action, would treat as conceded African-American former Architect of the Capitol (AOC) employee's factual allegation, in his responsive statement of material facts, that he had approximately three decades of painting experience, where AOC, in its reply statement of material facts, claimed that allegation was "patently untrue" without citing any evidence in support of that assertion. [Herbert v. Architect of Capitol, D.D.C.2012, 839 F.Supp.2d 284. Summary Judgment 🏠 95; Summary Judgment 🏠 287; Summary Judgment 🏠 289](#)

On motion for summary judgment on claims alleging violations of RESPA, borrowers conceded arguments that defendants had violated RESPA by failing to respond to their written requests for information regarding late fees and other charges, by charging them late fees within 60-day grace period, and by improperly reporting late payments and other charges to consumer reporting agencies, where borrowers failed to address defendants' responsive arguments in their opposition papers. [Antoine v. U.S. Bank Nat. Ass'n, D.D.C.2010, 821 F.Supp.2d 1. Summary Judgment 🏠 286](#)

District court would treat as conceded those arguments of federal employer that African-American employee failed to address in her opposition to employer's motion for summary judgment, in employee's Title VII action alleging race and sex discrimination. [Glass v. Lahood, D.D.C.2011, 786 F.Supp.2d 189, affirmed 2011 WL 6759550. Summary Judgment 🏠 286](#)

Failure to prosecute, practice and procedure

Automobile insurers willfully neglected to prosecute cause of action alleging that claimants engaged in conspiracy in violation of Racketeer Influenced and Corrupt Organizations Act (RICO) in connection with submission of allegedly fraudulent insurance claims, and district court would therefore deny insurers' motion for summary judgment on RICO conspiracy cause of action, where insurers provided neither legal nor factual support for RICO conspiracy cause of action, and failed to comply with local rule requiring them to provide court with citations and supporting authorities. [Puerto Rico American Ins. Co. v. Burgos, D.Puerto Rico 2011, 867 F.Supp.2d 216. Summary Judgment 🏠 122](#)

Stay of consideration, practice and procedure

District Court could rule on Department of Justice's (DOJ) motion for summary judgment in Freedom of Information Act (FOIA) action without permitting requester to file opposition, where parties agreed that briefing on summary judgment motion would be stayed while Court decided requester's motion to either strike, or order publicly-filed, an ex parte declaration, Court reviewed the unredacted declaration in camera, Court determined that declaration was so conclusive that further briefing and argument was clearly unnecessary, and Court then ruled on motion without lifting stay. [Truthout v. Department of Justice, E.D.Cal.2014, 20 F.Supp.3d 760, reconsideration denied, affirmed 667 Fed.Appx. 637, 2016 WL 3749058. Summary Judgment 🏠 282](#)

Owner of copyright to nonfiction work was not entitled to stay decision with respect to summary judgment motion pending completion of discovery in alleged infringer's action seeking declaration that his play did not infringe copyright, where alleged infringer conceded that copyright owner could establish actual copying through proof that he had

access to work and that there was probative similarity between works, thereby making it possible to decide motion based on comparison of works without need to consider any extrinsic evidence with respect to actual copying. [Crane v. Poetic Products Ltd.](#), S.D.N.Y.2008, 549 F.Supp.2d 566. Summary Judgment 🏷️ 352

In action brought by subrogated marine cargo insurer against ship and navigation company, stemming from alleged damage to shipment of hardware fixtures, insurer's summary judgment motion would be properly stayed pending deposition of driver of shipping container; defendants sought deposition to gain further details of driver's carriage of cargo, such information may have cast doubt on insurer's proffer of material facts, and driver could not be located at time that deposition was originally sought. [American Home Assur. Co. v. ZIM JAMAICA](#), S.D.N.Y.2006, 418 F.Supp.2d 537. Summary Judgment 🏷️ 345

Former federal employee's claims, that she had not had opportunity to depose officials who were responsible for her termination, and that she had not had opportunity to secure appropriate government documents on alleged rules and regulations that she violated, leading to her termination, were insufficient to justify stay in court's consideration of summary judgment, as required to grant employee's request for time for discovery prior to ruling on summary judgment in Title VII case; prior record included affidavits of relevant officials and witnesses, and a full and detailed factual record was created through process before Merit Systems Protection Board (MSPB). [Khoury v. Meserve](#), D.Md.2003, 268 F.Supp.2d 600, affirmed 85 Fed.Appx. 960, 2004 WL 119354. Summary Judgment 🏷️ 344

Corporation was entitled to stay or denial of former employee's motion for summary judgment, in corporation's action alleging employee breached parties' non-disclosure covenant, where corporation's competitors had exclusive control over documents and information necessary to establish a causal link between employee's alleged disclosure of trade secrets and corporation's damages, corporation made reasonable efforts to obtain information prior to responding to employee's motion, and discovery period had not yet closed. [American Maplan Corp. v. Heilmayr](#), D.Kan.2001, 165 F.Supp.2d 1247. Summary Judgment 🏷️ 344

Plaintiff was not entitled to stay briefing on defendant's motion for summary judgment due to defendant's failure to respond to her email request to schedule seven depositions 16 days before summary judgment deadline, where plaintiff did not follow up with defendant, send notices of depositions, file motion to compel, or seek assistance from court, and plaintiff failed to explain how witnesses could help her case at summary judgment. [Bluestein v. Central Wisconsin Anesthesiology, S.C.](#), W.D.Wis.2013, 296 F.R.D. 597. Summary Judgment 🏷️ 284

Insofar as summary judgment opposition brief of former trade school students identified specific reasons why further discovery was necessary with regard to particular facts or claims against school, and school had not provided anything to suggest otherwise, district court would refrain from granting summary judgment as to any such fact or claim; court would not refrain from addressing particular facts or claims, however, where students failed to identify any specific reason for deferring summary judgment, or where record indicated they had adequate opportunity to discover relevant facts. [Jamieson v. Vatterott Educational Centers, Inc.](#), D.Kan.2009, 259 F.R.D. 520, reconsideration granted. Summary Judgment 🏷️ 344

Time of motion, practice and procedure--Generally

Although district court may impose reasonable time limitations on summary judgment motion for purposes of judicial economy and fairness, it acts with impermissible arbitrariness and in clear excess of its authority, warranting mandamus relief, where it dismisses summary judgment motion as untimely without having previously set deadlines for filing of such motions, except that motions made within 10 days of trial may be dismissed under terms of summary judgment rule. [In re School Asbestos Litigation](#), C.A.3 (Pa.) 1992, 977 F.2d 764, as amended. Mandamus 🏷️ 51

While issue respecting whether vessel had become so damaged at sea that it was incapable of further voyages and was therefore, a "wreck" so as to justify discharge of seamen was not presented by defendants in their pleadings in suit wherein seamen sought to recover against vessel and its owner for alleged premature discharge where issue was raised by defendants in a pretrial memorandum accompanying a 45-day pretrial order limitation for filing motions for summary judgment, an order that was not a bar to later filing

because this rule expressly authorizes a "defending party" to move "at any time" for summary judgment, district court was not precluded from considering issue because it was allegedly first raised in defendants' cross motion and supporting affidavits filed after expiration of 45-day limitation fixed by pretrial order. [Manetas v. International Petroleum Carriers, Inc., C.A.3 \(N.J.\) 1976, 541 F.2d 408. Summary Judgment 📌 275](#)

Defendant may move for summary judgment at any time after pleading stating a claim is served upon him, provided it clearly appears that no valid claim against him exists. [Schwartz v. Compagnie General Transatlantique, C.A.2 \(N.Y.\) 1968, 405 F.2d 270. See, also, Gifford v. Travelers Protective Ass'n of America, C.C.A.Cal.1946, 153 F.2d 209; Myers v. Cromwell, D.C.Kan.1967, 267 F.Supp. 12; U.S. v. William S. Gray & Co., D.C.N.Y.1945, 59 F.Supp. 665; Johnson v. Johnson & Co., D.C.Ga.1942, 2 F.R.D. 291; Rambo v. U.S., D.C.Ga.1941, 2 F.R.D. 200. Summary Judgment 📌 275](#)

Pretrial order's deadline for civil rights defendant's filing of summary judgment motion would not be extended, though co-defendants' identical motions were already pending, absent showing of good cause; defendant offered no reason to justify his failure to comply with deadline, and did not request leave for extension until more than two weeks after deadline had passed. [Martinez v. Cornell Corrections of Texas, Inc., a Delaware Corp., D.N.M.2005, 377 F.Supp.2d 1138. Federal Civil Procedure 📌 1935.1](#)

Employer university's reply brief, which was submitted in support of its motion for summary judgment in employment discrimination action after deadline had passed, would not be considered, absent showing that delay was result of employer's excusable neglect; court would not sua sponte find excusable neglect by employer. [Zhou v. Pittsburg State University, D.Kan.2003, 252 F.Supp.2d 1194, affirmed 2004 WL 1529252. Summary Judgment 📌 290](#)

In action under Warsaw Convention for injuries allegedly suffered by passengers on airline flight, airline's motion for summary judgment was not premature; alleged accident occurred more than three years previously, and any opposition by plaintiffs to motion called for facts entirely within plaintiffs' control and which plaintiffs had ample opportunity to develop. [Bobian v. CSA Czech Airlines, D.N.J.2002, 232 F.Supp.2d 319, affirmed 93 Fed.Appx. 406, 2004 WL 628864. Summary Judgment 📌 275](#)

District court would review merits of defendant's motion for summary judgment, although it was filed four days late, where no evidence was presented regarding actual prejudice to plaintiff and notions of judicial economy and fairness militated against harsh response of denying or dismissing motion. [Brumback v. Callas Contractors, Inc., D.Md.1995, 913 F.Supp. 929. Summary Judgment 📌 275](#)

District court had discretion to permit late filing of partial summary judgment motion, even though defendants did not demonstrate any excusable neglect. [Gomez v. Trustees of Harvard University, D.D.C.1987, 676 F.Supp. 13. Summary Judgment 📌 63](#)

Defendant was not entitled to file summary judgment motion at any time and without District Court's permission in complex, multidistrict litigation; rather, District Court had authority to adopt special procedures to manage litigation through, including limiting timing of summary adjudication that might otherwise exist under rule governing motions for summary judgment. [In re New Motor Vehicles Canadian Export Antitrust Litigation, D.Me.2005, 229 F.R.D. 35. Federal Civil Procedure 📌 1938.1; Summary Judgment 📌 275](#)

Court would decline to revisit its earlier order granting partial summary judgment against one plaintiff, where motion for reconsideration was not brought to court's attention until ten days before scheduled trial involving multiple parties; however, because docketing error apparently was responsible for motion not reaching court, order directing partial summary judgment would be made without prejudice to plaintiff's filing claims in new action. [Reyes Canada v. Rey Hernandez, D.Puerto Rico 2004, 221 F.R.D. 294. Summary Judgment 📌 63; Summary Judgment 📌 362](#)

In bankruptcy trustee's adversary proceeding against mortgagee under deed of trust and purchaser at foreclosure sale, this rule permitted trustee to file motion for summary judgment before disposition of purchaser's motion to dismiss. [In re Richardson, Bkrcty.D.Utah 1982, 23 B.R. 434. Bankruptcy 📌 2164.1](#)

---- Responsive pleading, time of motion, practice and procedure

Summary judgment motion can be filed before an answer has been filed. [Marquez v. Cable One, Inc., C.A.10 \(N.M.\) 2006, 463 F.3d 1118. Summary Judgment 📌 275](#)

Summary judgment motion is not appropriate until 20 days after suit is filed; appropriate motion by defendant, which filed no answer, would have been motion to dismiss. [Southern Pac. Transp. Co. v. National Molasses Co., C.A.5 \(La.\) 1976, 540 F.2d 213. Summary Judgment 📌 275](#)

Motion for summary judgment may be made by defendant before pleading to complaint and supporting affidavits are not necessary. [Hubicki v. ACF Industries, Inc., C.A.3 \(Pa.\) 1973, 484 F.2d 519. Summary Judgment 📌 275; Summary Judgment 📌 311](#)

Under former subd. (a) of this rule, governing summary judgment procedure, plaintiff's motion for summary judgment made before filing of answer was premature. [Begnaud v. White, C.A.6 \(Tenn.\) 1948, 170 F.2d 323. Summary Judgment 📌 275](#)

Parties' cross-motions for summary judgment were premature, and thus, would not be adjudicated, in property owner's action against property insurer, seeking to recover for property loss caused by hurricane, on the ground that insurer incorrectly applied owner's premium payments to a different policy covering another one of owner's properties, where insurer had not yet filed answer and no discovery had been conducted. [Toussie v. Allstate Insurance Company, E.D.N.Y.2016, 213 F.Supp.3d 444. Summary Judgment 📌 275](#)

Plaintiff's motion for summary judgment filed more than 20 days after commencement of action for declaratory judgment was not premature, even though plaintiff served it four days before defendants filed answer, affirmative defenses, and counterclaims; defendant had ample time to conduct discovery. [Coregis Ins. Co. v. McCollum, M.D.Fla.1997, 961 F.Supp. 1572. Summary Judgment 📌 275](#)

---- Discovery, time of motion, practice and procedure

It is not per se procedural error for the district court to rule on a summary judgment motion without first ruling on the opponent's motion for a continuance for discovery to permit opponent to obtain facts necessary to justify opposition to summary judgment. [Ray v. American Airlines, Inc., C.A.8 \(Ark.\) 2010, 609 F.3d 917. Summary Judgment 📌 345](#)

The government's motion for summary judgment on FBI agent's Title VII claim that one of her supervisors retaliated against her for her prior equal employment opportunity (EEO) complaint, by rescinding an offer to transfer agent to another unit, was premature, and thus discovery was warranted on issue of whether the rescission of the transfer offer was an adverse action or was, as the government contended, merely a lateral transfer to the same grade level with similar job responsibilities which would not have provided agent with additional employment benefits or provide any additional future promotional opportunities. [Ramos v. Lynch, D.D.C.2017, 267 F.Supp.3d 39. Federal Civil Procedure 📌 1264; Summary Judgment 📌 352](#)

Insurer was not required to wait to bring its motion for summary judgment until after all discovery had been conducted in plaintiff's suit seeking declaration that insurer had the duty under homeowners policy and/or boatowners policy to provide coverage and indemnify insured in her underlying action against him arising from injuries she sustained when tube she was riding in while it was being towed by a boat owned and operated by insured collided with a boat hoist; plaintiff did not contend that she could not present facts essential to justify her opposition to insurer's motion. [Scott v. State Farm Fire & Cas. Co., E.D.Mich.2015, 86 F.Supp.3d 727. Summary Judgment 📌 275](#)

Motion for summary judgment on mortgagors' fraudulent misrepresentation claim against appraiser's alleged successor in interest and appraiser's alleged former employee was not premature, despite mortgagors' contention that deposition of their real estate agent had not yet occurred; summary judgment motion alleged claim was barred by parties' settlement agreement in a separate case, and mortgagors did not show what information agent could provide that would pertain to the scope and effect of settlement agreement. [HSBC Bank USA, Nat. Ass'n v. Resh, S.D.W.Va.2014, 40 F.Supp.3d 728. Summary Judgment 📌 352](#)

District of Columbia's motion for summary judgment on § 1983 claim was premature on the existing record; stay of discovery was ordered in case, District's responses to plaintiff's interrogatories and document requests were incomplete, and District had failed to respond

to plaintiff's requests for clarification. [Olaniyi v. District of Columbia, D.D.C.2011, 763 F.Supp.2d 70. Summary Judgment](#) 🏠 344

Summary judgment motion that mortgage lender filed very early during pretrial stage of cause of action by borrowers under the Real Estate Settlement Procedures Act (RESPA), before borrowers had opportunity to take a single deposition, had to be denied as premature, where claims asserted by borrowers, which questioned the bona fide nature of entity allegedly originating their loans and whether entity was sham entity that lender had created in attempt to circumvent RESPA restrictions on payment of referral fees, required fact-intensive analysis from fully developed record. [Minter v. Wells Fargo Bank, N.A., D.Md.2009, 593 F.Supp.2d 788. Summary Judgment](#) 🏠 275; [Summary Judgment](#) 🏠 352

Before company that purchased stock of discrimination plaintiff's employer five months after termination would be entitled to summary judgment in action under District of Columbia Human Rights Act (DCHRA), plaintiff employee had to be afforded opportunity to take discovery in regard to both successor's awareness of her claim and other defendants' ability to satisfy judgment sought. [Ware v. Nicklin Associates, Inc., D.D.C.2008, 580 F.Supp.2d 158. Federal Civil Procedure](#) 🏠 1264

Defendants' motion for summary judgment, in pro se employee's action asserting Title VII employment discrimination and retaliation claims, was not premature, though employee had not conducted discovery; discovery had been permitted for almost a year before defendants moved for summary judgment, but employee had squandered her opportunity to conduct discovery. [Lavergne v. HCA Inc., E.D.Tex.2006, 452 F.Supp.2d 682. Federal Civil Procedure](#) 🏠 1264; [Summary Judgment](#) 🏠 352

Arrestee's motion for summary judgment in his civil rights action against county and private operator of county jail, served on day that discovery began, was premature. [Blumel v. Mylander, M.D.Fla.1996, 919 F.Supp. 423. Summary Judgment](#) 🏠 275

Motion for summary judgment was not premature where nonmoving party was made aware of possibility of motion by consent order on discovery and motion schedule, nonmoving party did not object to filing of motion prior to answering it, nonmoving party had several months after denial of its preliminary injunction motion in which to perform discovery before summary judgment motion needed to be addressed, discovery was taken specifically in conjunction with motion, and leave to replead would be granted if additional information obtained during discovery concerning other parties showed that nonmoving party did have viable cause of action, even though only ten of 56 depositions had been conducted when summary judgment motion was filed. [AD/SAT, a Div. of Skylight, Inc. v. Associated Press, S.D.N.Y.1995, 885 F.Supp. 511, reconsideration denied 920 F.Supp. 1287, affirmed 181 F.3d 216. Summary Judgment](#) 🏠 275

Motions for summary judgment that were filed at threshold of discovery in civil RICO action were premature and would be denied without prejudice. [U.S. v. Private Sanitation Industry Ass'n of Nassau/Suffolk, Inc., E.D.N.Y.1992, 793 F.Supp. 1114. Summary Judgment](#) 🏠 275

Summary judgment motions would be premature until all discovery had been completed, and thus time for filing such motions would be extended until ten days after completion of discovery. [City of Rome v. U. S., D.C.D.C.1978, 450 F.Supp. 378, probable jurisdiction noted 99 S.Ct. 3105, 443 U.S. 914, 61 L.Ed.2d 878, affirmed 100 S.Ct. 1548, 446 U.S. 156, 64 L.Ed.2d 119, rehearing denied 100 S.Ct. 3003, 447 U.S. 916, 64 L.Ed.2d 865. Summary Judgment](#) 🏠 275

Department of Health and Human Services (HHS) prematurely moved for summary judgment on employee's Title VII retaliation claim before even filing its answer, and thus, its motion would be denied to permit employee time to conduct discovery of evidence supporting his claim that 14-day suspension he received was in retaliation for his age-discrimination complaint, and not because he forged parking-permission slips for a contractor; although supervisor who imposed suspension was not himself accused of any wrongdoing in employee's age-discrimination complaint, that complaint alleged, in essence, that supervisor did not deserve to be promoted to the supervisor position instead of employee, and employee contended that discovery might produce evidence that supervisor punished him more harshly than others, thus demonstrating pretext. [Orlowske v. Burwell, D.D.C.2016, 318 F.R.D. 544. Federal Civil Procedure](#) 🏠 1264; [Summary Judgment](#) 🏠 275; [Summary Judgment](#) 🏠 352

---- Deadline extensions, time of motion, practice and procedure

Defendant's motion for summary judgment was timely filed, even though it was not filed until almost two months after deadline for dispositive motions established in court's scheduling order, where court granted parties' joint motion to extend expert-disclosure deadline and set expert-disclosure deadline one month after dispositive-motion deadline, and although court did not explicitly grant extension of dispositive-motion deadline, having deadline to move for summary judgment a month prior to close of discovery was illogical and contrary to rule providing that, "[u]nless...the court order[ed] otherwise," defendant could move "for summary judgment at any time until 30 days after the close of all discovery." [Certain Underwriters at Lloyd's of London v. Brewer Ferry Point Marina, Inc., D.Conn.2022, 603 F.Supp.3d 22. Summary Judgment 🔑 275](#)

---- Miscellaneous motions timely, time of motion, practice and procedure

Summary judgment motion by government in tax refund suit was timely, even though filed less than 45 days prior to date district court originally set matter for trial, where court subsequently issued scheduling order establishing pretrial conference four days after original trial date signaling that trial would not commence before that date and motion was filed 45 days prior to date of pretrial conference. [Silberstein v. I.R.S., C.A.8 \(Mo.\) 1994, 16 F.3d 858. Summary Judgment 🔑 275](#)

Where affidavit in support of motion for summary judgment was served with motion on June 22 and affidavit filed with court on June 28 were identical except the latter was executed and the former was not, appropriate time period for measuring ten-day requirement of rule that ten days must elapse between filing of summary judgment motion and hearing on the motion was June 22, when the motion was filed, to July 6, when summary judgment was granted, and thus, more than ten days elapsed between service of the motion and district court's order granting summary judgment, as required by subd. (c) of this rule. [McCloud River R. Co. v. Sabine River Forest Products, Inc., C.A.5 \(La.\) 1984, 735 F.2d 879. Summary Judgment 🔑 285; Summary Judgment 🔑 352](#)

In suit brought by trustees of carpenters' union funds seeking to compel employer contributions to the funds from a home building company, trial court did not commit reversible error in considering company's orally-renewed motion for summary judgment on day scheduled for trial in contravention for procedural requirements of this rule where the renewed motion was based on same ground company had urged previously and where trustees elected to argue the motion orally and apparently did not feel the need to request time to prepare pleadings for affidavits. [Trustees of Sabine Area Carpenter's Health & Welfare Fund v. Don Lightfoot Home Builder, Inc., C.A.5 \(Tex.\) 1983, 704 F.2d 822. Federal Courts 🔑 3705\(3\)](#)

Motion for summary judgment filed when defendants filed preanswer motion to dismiss complaint for lack of subject-matter jurisdiction and for failure to state claim on which relief could be granted was not premature. [Stein v. Oshinsky, C.A.2 \(N.Y.\) 1965, 348 F.2d 999, certiorari denied 86 S.Ct. 435, 382 U.S. 957, 15 L.Ed.2d 361. Summary Judgment 🔑 275](#)

Motion for summary judgment by purported assignee of marine bunker seller's rights and interests in bunker supply contracts was not premature under rule governing such motions when facts are unavailable to a nonmovant, despite argument by physical supplier of bunker that further discovery would shed light on validity of any assignment of interests from seller to purported assignee as well as purported assignee's knowledge of seller's deteriorating financial condition, since such discovery, although possibly important for final determination of purported assignee's entitlement to maritime lien against vessel, bore no relation to validity of supplier's in rem claim against vessel and in personam breach of contract claim against purported assignee. [ING Bank N.V. v. Temara, S.D.N.Y.2016, 203 F.Supp.3d 355, affirmed 892 F.3d 511, on remand 342 F.Supp.3d 558. Summary Judgment 🔑 345; Summary Judgment 🔑 352](#)

Judicial efficiency and fairness required district court to review former employer's untimely motion for summary judgment on issues of damages and equitable relief sought by female former employee in Title VII gender-discrimination action; employee was permitted to amend complaint after dispositive motions deadline had passed to specify she sought back pay, front pay, and reinstatement, and employer thus could not have addressed specific remedies at earlier date, additionally, issues raised in summary judgment motion concerned matters of law easily resolved by court, and employer would be prejudiced if court allowed

employee to amend complaint without permitting employer to seek summary judgment on novel issues raised for first time therein. [Lewis v. District of Columbia, D.D.C.2011, 791 F.Supp.2d 136. Summary Judgment 📄 275](#)

Even though construction company moved for summary judgment on laborer's claims for breach of contract and FLSA violations 206 days after the deadline for written discovery and depositions had passed, court would consider tardy motion, since company did not act in bad faith, laborers knew of defendant's motion prior to its being filed so were not prejudiced, and court had sufficient time to consider the motion despite delay. [Lopez v. NTI, LLC, D.Md.2010, 748 F.Supp.2d 471. Summary Judgment 📄 275](#)

Motion by homeowner's insurer for partial summary judgment on insured's claim seeking additional living expenses was not untimely in breach of contract action, where court entered order, holding in abeyance deadline for filing dispositive motions until after court ruled on insured's motion for leave to amend complaint, order did not specify how soon dispositive motions should be filed after resolution of motion to amend, and order resolving motion to amend did not re-set deadline for filing dispositive motions. [Woodworth v. Erie Ins. Co., W.D.N.Y.2010, 743 F.Supp.2d 201, on reconsideration in part 2011 WL 98494. Summary Judgment 📄 275](#)

Good cause existed for allowing plaintiff to amend scheduling order to file summary judgment motion after deadline set for filing dispositive motions, where District Court had granted defendant's initial summary judgment motion after setting deadline, original scheduling had been interrupted because of appeal and remand, and defendant's initial summary judgment was expected to completely resolve litigation, given that reversal was unanticipated. [Greenawalt v. Sun City West Fire Dist., D.Ariz.2003, 250 F.Supp.2d 1200. Federal Civil Procedure 📄 1935.1](#)

Motion for summary judgment could be considered when made shortly before scheduled commencement of jury selection in civil rights action against mayor and police officers alleging that plaintiff was falsely arrested and that false and defamatory statements were published in newspaper, and even though motion was untimely; motion sought summary judgment on issue of qualified immunity, resolving issue of qualified immunity was likely to reduce possibility of jury confusion. [LoSacco v. City of Middletown, D.Conn.1993, 822 F.Supp. 870, affirmed 33 F.3d 50. Summary Judgment 📄 275](#)

Motion for summary judgment, filed 49 days after petition and complaint were filed, was in compliance with subd. (a) of this rule and was timely. [United Food & Commercial Workers Union, Locals 197, 373, 428, 588, 775, 839, 870, 1119, 1179 and 1532, Chartered By United Food & Commercial Workers Intern. Union, AFL-CIO v. Alpha Beta Co., N.D.Cal.1982, 550 F.Supp. 1251, affirmed 736 F.2d 1371. Summary Judgment 📄 275](#)

--- Miscellaneous motions untimely, time of motion, practice and procedure

District court did not abuse its discretion in refusing to allow plaintiff to file motion for summary judgment more than nine months after deadline for filing dispositive motions, even though plaintiff claimed that motion was late because he finally obtained eyewitness declaration corroborating his allegations, where plaintiff had earlier supplemented opposition to defendant's motion for summary judgment with declaration. [Shekoyan v. Sibley Intern., C.A.D.C.2005, 409 F.3d 414, 366 U.S.App.D.C. 144, certiorari denied 126 S.Ct. 1337, 546 U.S. 1173, 164 L.Ed.2d 53. Summary Judgment 📄 275](#)

Trial court did not err in granting motion for summary judgment without hearing where opposing party had not requested a hearing until after order granting summary judgment was entered. [Clark Equipment Credit Corp. v. Martin Lumber Co., C.A.8 \(Ark.\) 1984, 731 F.2d 579. Summary Judgment 📄 341](#)

Motion for summary judgment made less than 20 days after commencement of action was premature. [Local Union No. 490, United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO v. Kirkhill Rubber Co., C.A.9 \(Cal.\) 1966, 367 F.2d 956. Summary Judgment 📄 275](#)

Asset manager's filing of summary judgment motion on its counterclaim against trustee was premature, in trustee's interpleader action seeking resolution of competing demands to assets it held in connection with collateralized loan obligation (CLO) transaction; no discovery took place prior to motion being filed, motion was filed before parties had

opportunity to file responsive pleadings to claims that were subject of motion, counterclaim against trustee was not based on any wrongful conduct that was distinct from subject of interpleader complaint, and motion would unnecessarily complicate procedural posture of dispute. [Bank of New York Mellon Trust Company, National Association v. Telos CLO 1006-1 Ltd., S.D.N.Y.2017, 274 F.Supp.3d 191. Summary Judgment](#) 📌 275

Employer's motion for summary judgment in employment action was premature in light of district court's order earlier that year granting employer's unopposed motion to consolidate five separate actions, and employer was directed to renew it when all discovery was completed in consolidated action; plaintiff against whom summary judgment was sought was just one of many former employees alleging that process utilized by employer in executing reduction-in-force was discriminatory and violated Worker Adjustment and Retraining Notification (WARN) Act and New York State Labor Law (NYSLL), and as consequence should court reach the merits of defendants' summary judgment motion at that juncture, it would inevitably make rulings on critical issues that could impact claims of the other plaintiffs, who had not even had opportunity to finish discovery. [Garnett-Bishop v. New York Community Bancorp, Inc., E.D.N.Y.2014, 49 F.Supp.3d 321. Federal Civil Procedure](#) 📌 1264; [Summary Judgment](#) 📌 352

Motion for summary judgment was premature in plaintiffs' action against individual defendants for injuries allegedly caused by malfunctioning vessel, since motion was filed during discovery and plaintiffs did not have an adequate opportunity to discover evidence relevant to a showing that corporate vessel owner was an alter ego for individual defendants, such that piercing corporate veil was warranted. [Nieto-Vicenty v. Valledor, D.Puerto Rico 2013, 984 F.Supp.2d 14. Summary Judgment](#) 📌 275

Pharmaceutical manufacturer's motion for summary judgment was procedurally improper, warranting denial in action by executor of estate of deceased consumer, asserting claims under the Connecticut Products Liability Act (CPLA); motion was filed over five months after time limit established by scheduling order, and manufacturer offered no justification for delay. [Moss v. Wyeth, Inc., D.Conn.2012, 872 F.Supp.2d 154. Federal Civil Procedure](#) 📌 1938.1; [Summary Judgment](#) 📌 275

Notice, practice and procedure--Generally

Corporate taxpayer was not deprived of notice and opportunity to respond to government's motion for summary judgment on taxpayer's claim for income tax refund for money paid to redeem taxpayer's stock by district court's decision to grant summary judgment based on determination that stock repurchase was not necessary to taxpayer's survival, even though government argued different factual basis for its motion; taxpayer knew that it would not be entitled to claimed deduction unless it could prove that stock redemption was necessary to its survival. [U.S. v. Houston Pipeline Co., C.A.5 \(Tex.\) 1994, 37 F.3d 224. Summary Judgment](#) 📌 277(2); [Summary Judgment](#) 📌 290

Nonmovant was entitled to ten-day advance notice that summary judgment would be sought. [National Fire Ins. v. Bartolazo, C.A.11 \(Fla.\) 1994, 27 F.3d 518. Summary Judgment](#) 📌 276

Since summary judgment forecloses any future litigation of case, district court must give required 10-day notice to insure that nonmoving party has opportunity to make every possible factual and legal argument. [Powell v. U.S., C.A.5 \(Tex.\) 1988, 849 F.2d 1576. Summary Judgment](#) 📌 276

Even when motion for summary judgment is made on date of trial, district court must comply with procedural requirement [[Fed.Rules Civ.Proc.Rule 56\(c\)](#), 28 U.S.C.A.] that ten-day notice be provided prior to granting of motion for summary judgment. [Western Fire Ins. Co. v. Copeland, C.A.5 \(Miss.\) 1986, 786 F.2d 649, on remand 651 F.Supp. 1051. Summary Judgment](#) 📌 276

Purpose of ten-day notice provision in [Rule 56\(c\)](#) is to give nonmoving party reasonable opportunity, on motion for summary judgment, to submit opposing material to create a genuine issue of material fact. [Dillard v. Blackburn, C.A.5 \(La.\) 1986, 780 F.2d 509. Summary Judgment](#) 📌 276

The Eleventh Circuit strictly enforces ten-day notice requirement of this rule. [Milburn v. U.S., C.A.11 \(Fla.\) 1984, 734 F.2d 762. Summary Judgment](#) 📌 276

Grounds for motion for summary judgment need not have been included in prior pleadings; it is enough that notice of moving party's position is given in motion papers, so that opposing party has adequate opportunity to respond. [Fairfield Scientific Corp. v. U. S., Ct.Cl.1979, 611 F.2d 854, 222 Ct.Cl. 167. Summary Judgment](#) 📌 277(2)

Before motion for summary judgment is granted, a pro se plaintiff must be advised of his right to file counteraffidavits or other responsive material, and he must be alerted to the fact that his failure to so respond might result in the entry of summary judgment against him; in addition, the notice must be sufficiently clear to be understood by a pro se litigant and calculated to apprise him of what is required under the summary judgment rule. [Davis v. Zahradnick, C.A.4 \(Va.\) 1979, 600 F.2d 458. Summary Judgment](#) 📌 291

District court is not required to "invite" appropriate party to file motion under this rule or to inform party that it will treat a previously filed motion as a motion for summary judgment if it thinks case is ready for summary disposition as long as party against whom summary judgment will be entered is afforded advance notice and an adequate opportunity to show why summary judgment should not be granted. [Kistner v. Califano, C.A.6 \(Ohio\) 1978, 579 F.2d 1004. Summary Judgment](#) 📌 278(1)

This rule contemplates both fair notice that summary judgment motion has been made and a reasonable opportunity to respond. [Choudhry v. Jenkins, C.A.7 \(Ind.\) 1977, 559 F.2d 1085, certiorari denied 98 S.Ct. 634, 434 U.S. 997, 54 L.Ed.2d 491. Summary Judgment](#) 📌 276

Judgment on a claim should not be entered without motion for summary relief and without notice and opportunity for the opposing party to develop any defense. [Sharlitt v. Gorinstein, C.A.5 \(Fla.\) 1976, 535 F.2d 282. Summary Judgment](#) 📌 278(1)

Even if competitor was not sufficiently notified that the court might grant summary judgment in favor of patentee on hypothetical negotiation date for infringement of patent claim based on competitor's motion for summary judgment and patentee's response thereto, exception to the notice requirement applied since parties' dispute did not center on the facts, but rather presented a legal question on a fully developed, undisputed record; specifically, parties disputed whether case involved one continuous act of infringement or whether the infringement caused by accused product represented an act of infringement separate and distinct from the earlier acts of infringement by competitor's other products. [Boston Scientific Corp. v. Cordis Corp., D.Del.2011, 777 F.Supp.2d 783. Patents](#) 📌 1937

When both parties submit materials beyond the pleadings in support of or opposing a motion to dismiss, the prior action on the part of the parties puts them on notice that the judge may treat the motion as one for summary judgment. [Mount St. Scholastica, Inc. v. City of Atchison, Kansas, D.Kan.2007, 482 F.Supp.2d 1281. Summary Judgment](#) 📌 278(2)

---- Discretion of court, notice, practice and procedure

The requirement of this rule for ten-day advance notice of hearing on motion for summary judgment is not a discretionary procedural mechanism to be heeded or ignored by district court as it deems appropriate. [Winbourne v. Eastern Air Lines, Inc., C.A.2 \(N.Y.\) 1980, 632 F.2d 219. Summary Judgment](#) 📌 342

Trial court ordinarily has discretion to refuse to pass on a motion for summary judgment and to proceed with trial on the merits, where movant makes the first request therefor at the hearing or where movant fails to give opposing party requisite notice. [Williams v. Howard Johnson's Inc. of Washington, C.A.4 \(Va.\) 1963, 323 F.2d 102. Summary Judgment](#) 📌 276

---- Constructive notice, practice and procedure

Even if plaintiff had been deprived of ten days' notice that district court would be taking motion for summary judgment under advisement on specified date, failure to give notice was, at most, harmless error and did not warrant vacation of summary judgment; plaintiff had at least constructive notice and had every opportunity to marshal his defenses to motion. [Jones v. American Broadcasting Companies, Inc., M.D.Fla.1988, 122 F.R.D. 270. Federal Civil Procedure](#) 📌 2653

---- Sua sponte determinations, notice, practice and procedure

District court did not grant summary judgment sua sponte on a ground that debtor did not raise, thereby giving debt collector no notice or opportunity to respond, when court granted summary judgment for debtor on affirmative defense of bona fide error in debtor's Fair Debt

Collection Practices Act (FDCPA) action arising from debtor's receipt of an unanswered collections call the day after debt collector received a cease and desist letter from debtor; debt collector confused burden of proof standards on motion for summary judgment. [Lupia v. Medcredit, Inc., C.A.10 \(Colo.\) 2021, 8 F.4th 1184. Summary Judgment](#) 🏷️ 280

District Court's error by failing to give notice to the parties before granting summary judgment sua sponte in favor of Federal Deposit Insurance Corporation in its receivership capacity (FDIC-R) was harmless in action brought by surety on performance bonds following repudiation of letters of credit by FDIC-R, alleging violations of Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA); surety, as nonmoving party, was not deprived of opportunity to collect and submit summary judgment evidence, as surety was given five months to conduct discovery and depose witnesses and had attached to its amended complaint 16 exhibits, including deposition transcript excerpts, written correspondence, e-mails, and an asset report. [Lexon Insurance Company, Incorporated v. Federal Deposit Insurance Corporation, C.A.5 \(La.\) 2021, 7 F.4th 315. Federal Courts](#) 🏷️ 3705(3)

Administrator of swimmer's estate had sufficient notice that district court might grant summary judgment on grounds not raised by United States and manufacturers of Coast Guard vessel and its engines, and thus district court acted within its authority in sua sponte granting summary judgment on those issues upon acceptance of magistrate judge's report and recommendation that recommended as such, in action arising from death of swimmer who was fatally struck by vessel; administrator objected to report and recommendation 14 days after it was filed, and district court adopted the magistrate's report and recommendation in its entirety almost three months after those objections were filed. [Ortega Garcia v. United States, C.A.5 \(Tex.\) 2021, 986 F.3d 513. Summary Judgment](#) 🏷️ 280

District court impermissibly granted summary judgment sua sponte to data services subcontractor on its breach of contract claim against government contractor, where district court did not give contractor notice and the opportunity to assert the affirmative defenses which it had already asserted in response to same claim in prior version of complaint. [KST Data, Inc. v. DXC Technology Company, C.A.9 \(Cal.\) 2020, 980 F.3d 709](#), for additional opinion, see [836 Fed.Appx. 484, 2020 WL 6747212. Summary Judgment](#) 🏷️ 280

District Court committed procedural error by sua sponte granting summary judgment to government on claimant's statute of limitations defense, in government's in rem civil forfeiture action with respect to assets owned by foreign corporation that was allegedly owned by Iranian government and traceable to violations of the International Emergency Economic Powers Act (IEEPA), where claimant did not have notice and reasonable time to respond. [United States v. Assa Co. Ltd., C.A.2 \(N.Y.\) 2019, 934 F.3d 185. War And National Emergency](#) 🏷️ 1335

District Court's procedural error in sua sponte granting summary judgment to government on claimant's statute of limitations defense was not harmless, in government's in rem civil forfeiture action with respect to assets owned by foreign corporation that was allegedly owned by Iranian government and traceable to violations of the International Emergency Economic Powers Act (IEEPA), where parties had not briefed the issue, and lack of evidentiary record underscored claimant's need for reasonable opportunity to present its evidence and arguments. [United States v. Assa Co. Ltd., C.A.2 \(N.Y.\) 2019, 934 F.3d 185. War And National Emergency](#) 🏷️ 1335

In borrowers' action against loan servicer for, inter alia, its alleged violation of the Fair Credit Reporting Act (FCRA), the district court erred in sua sponte granting summary judgment to loan servicer on the issue of punitive damages; though borrowers were not required to raise punitive damages on summary judgment, the court summarily disposed of the issue without hearing from either party, and the court also applied an incorrect "intentional or purposeful" standard, which did not comport with the applicable definition of "willful" violations as encompassing reckless conduct. [Marchisio v. Carrington Mortgage Services, LLC, C.A.11 \(Fla.\) 2019, 919 F.3d 1288, on remand 2020 WL 4350725. Summary Judgment](#) 🏷️ 280

Summary judgment could be granted sua sponte to detainee, acting pro se, on issue under PLRA of whether he had exhausted his administrative remedies on claims alleging failure to protect him against other inmates, deliberate indifference to his serious medical needs,

failure to adequately train and supervise deputies, intentional infliction of emotional distress, and gross negligence; although detainee did not make cross-motion for summary judgment, sheriff moved for summary judgment on that issue and he had full opportunity to gather evidence. [Albino v. Baca, C.A.9 \(Cal.\) 2014, 747 F.3d 1162](#), certiorari denied [135 S.Ct. 403, 574 U.S. 968, 190 L.Ed.2d 307](#), on remand [2015 WL 13917161](#). [Summary Judgment](#) 🗝️ 280

District court's sua sponte grant of summary judgment in action alleging intentional infliction of emotional distress and violation of Americans with Disabilities Act (ADA), on grounds not raised by either party, was abuse of discretion; former employee did not have sufficient notice that summary judgment would be granted against her on alternative grounds, as the entirety of the discussion and argumentation surrounding summary judgment focused on issue of collateral estoppel, and employee was prejudiced as a result of the ruling in that, had she been given notice that the district court was considering granting summary judgment on alternative grounds, she could conceivably have sought or produced additional evidence to defend against summary judgment. [Smith v. Perkins Bd. of Educ., C.A.6 \(Ohio\) 2013, 708 F.3d 821](#). [Summary Judgment](#) 🗝️ 280

Under Ninth Circuit law, district court could not sua sponte grant summary judgment in action seeking review of Board of Patent Appeals and Interferences' interference decision without giving plaintiff ten days' notice, even though court suggested during last hearing that it did not have to consider merits of interference if it agreed with Board's procedural grounds, where plaintiff claimed that Board's priority decision was in error and informed district court that it intended to present new testimony, and genuine disputes existed as to whether defendant's patent application contained adequate description of material term and whether prior art anticipated defendant's patent. [Koninklijke Philips Electronics N.V. v. Cardiac Science Operating Co., C.A.Fed. \(Wash.\) 2010, 590 F.3d 1326, 93 U.S.P.Q.2d 1227](#), on remand [2010 WL 2803027](#). [Patents](#) 🗝️ 961

District court could not consider sua sponte element of damage as to plaintiff's remaining claims after defendant's motion for summary judgment only raised issue of injury as to plaintiff's fraud claim; court was required to first notify plaintiff that it would be considering the issue of injury as to each of the remaining claims. [Imaging Business Machines, LLC. v. BancTec, Inc., C.A.11 \(Ala.\) 2006, 459 F.3d 1186, 80 U.S.P.Q.2d 1213](#). [Summary Judgment](#) 🗝️ 280

District court may enter summary judgment sua sponte if the parties are given adequate notice that they must present all of their evidence. [Imaging Business Machines, LLC. v. BancTec, Inc., C.A.11 \(Ala.\) 2006, 459 F.3d 1186, 80 U.S.P.Q.2d 1213](#). [Summary Judgment](#) 🗝️ 280

Sua sponte orders of summary judgment will be upheld only when the party against whom judgment will be entered was given sufficient advance notice and an adequate opportunity to demonstrate why summary judgment should not be granted. [Figg v. Russell, C.A.8 \(S.D.\) 2006, 433 F.3d 593](#). [Federal Courts](#) 🗝️ 3604(4)

District court could sua sponte grant summary judgment to two defendant police officials, in [§ 1983](#) action brought by administratrix of estate of deceased police officer, alleging that shooting of officer, who was off-duty, by two on-duty officers resulted from city's and police officials' failure to adequately train and supervise officers, despite administratrix's claim of procedural unfairness; administratrix had notice of city's motion for summary judgment on such claims, thus having every incentive to present her best case in opposition to summary judgment, and there was no harm in any event, because appellate court's review of fixed record was de novo. [Young v. City of Providence ex rel. Napolitano, C.A.1 \(R.I.\) 2005, 404 F.3d 4](#), on remand [396 F.Supp.2d 125](#). [Federal Courts](#) 🗝️ 3705(3); [Summary Judgment](#) 🗝️ 280

Sua sponte grant of summary judgment, without giving notice to the parties, is not the preferred method by which to dispose of claims, not only because district courts run the risk of unduly prejudicing the parties, but also because such grants of summary judgment can have serious, if unintended, consequences. [Gibson v. Mayor and Council of City of Wilmington, C.A.3 \(Del.\) 2004, 355 F.3d 215](#). [Summary Judgment](#) 🗝️ 280

In context of sua sponte summary judgment, "notice" means that targeted party had reason to believe court might reach issue and received fair opportunity to put its best foot forward.

[Gibson v. Mayor and Council of City of Wilmington, C.A.3 \(Del.\) 2004, 355 F.3d 215.](#)

[Summary Judgment](#) 🏠 280

District court could sua sponte grant summary judgment to mayor and city council on police officer's claim that he was terminated pursuant to an overbroad and vague police department directive, which infringed on his First Amendment right to free speech, without first giving notice to officer, where point at issue was purely legal, record was fully developed, in that officer had earlier moved for summary judgment on issue and summary judgment was granted sua sponte on eve of trial after discovery was completed, and failure to give notice did not prejudice officer. [Gibson v. Mayor and Council of City of Wilmington, C.A.3 \(Del.\) 2004, 355 F.3d 215.](#) [Summary Judgment](#) 🏠 112; [Summary Judgment](#) 🏠 280

Exception to requirement that district court give parties notice before sua sponte granting summary judgment exists when following conditions are met: (1) point at issue is purely legal, (2) record was fully developed, and (3) failure to give notice does not prejudice the party. [Gibson v. Mayor and Council of City of Wilmington, C.A.3 \(Del.\) 2004, 355 F.3d 215.](#) [Summary Judgment](#) 🏠 280

Sua sponte dismissal, upon grant of summary judgment in favor of defendants, of pro se § 1983 action brought by prisoners who were Shi'ite Muslims, claiming that their free exercise of religion rights were violated through regulations requiring that they worship jointly with Sunni Muslims, was improper; prisoners were not given notice prior to dismissal of their obligation to identify a genuine issue of material fact to avoid summary judgment, and court relied only on evidence submitted with respect to prisoners' motion for preliminary injunction. [Pugh v. Goord, C.A.2 \(N.Y.\) 2003, 345 F.3d 121.](#) [Summary Judgment](#) 🏠 280

District court's sua sponte grant of summary judgment for city, and against adult entertainment establishment, on issue of whether ordinance establishing licensing scheme for adult businesses operated as unconstitutional prior restraint on expression was proper; district court had invited parties to submit motions related to issue of whether prior restraint problems had been cured by amendment to ordinance, and although district court had no formal motion for summary judgment before it, and did not formally notify establishment that it was considering summary judgment, merits of claims were fully briefed and evidence was accepted and considered in conjunction with establishment's motion to amend its complaint. [Artistic Entertainment, Inc. v. City of Warner Robins, C.A.11 \(Ga.\) 2003, 331 F.3d 1196,](#) rehearing and rehearing en banc denied [87 Fed.Appx. 716, 2003 WL 22670914,](#) certiorari denied [124 S.Ct. 2017, 541 U.S. 988, 158 L.Ed.2d 491.](#) [Summary Judgment](#) 🏠 280

District court's failure to give sufficient notice to defendant insurer that court might grant summary judgment to plaintiff insureds on breach of contract claim, at time that court ruled on insurer's motion for summary judgment against insureds, precluded sua sponte grant of summary judgment for insureds on that claim where issues involved questions of fact. [Massey v. Congress Life Ins. Co., C.A.11 \(Ala.\) 1997, 116 F.3d 1414.](#) [Summary Judgment](#) 🏠 280

District court may grant summary judgment sua sponte, so long as losing party was on notice that she had to come forward with all of her evidence. [Nowlin v. Resolution Trust Corp., C.A.5 \(Tex.\) 1994, 33 F.3d 498.](#) [Summary Judgment](#) 🏠 280

District court's failure to provide plaintiffs notice prior to entering summary judgment sua sponte for defendants who had not moved for summary judgment was harmless error; plaintiffs had not identified material fact issue regarding their claim and thus, it would be useless procedure to reverse district court because it did not allow ten days to elapse before entering summary judgment. [Leatherman v. Tarrant County Narcotics Intelligence and Coordination Unit, C.A.5 \(Tex.\) 1994, 28 F.3d 1388.](#) [Federal Courts](#) 🏠 3705(3)

Upon denial of hotel's motion for summary judgment, district court erroneously granted summary judgment in favor of elevator servicer sua sponte and without giving hotel notice and opportunity to oppose summary judgment. [Otis Elevator Co. v. George Washington Hotel Corp., C.A.3 \(Pa.\) 1994, 27 F.3d 903.](#) [Summary Judgment](#) 🏠 280

Sua sponte summary judgment procedure employed by district court violated requirements of summary judgment rule; plaintiffs had not been notified that trial court would entertain hearing on summary judgment when they appeared for trial, were afforded 30 minutes,

rather than minimum period of ten days to prepare for hearing and marshal evidence in opposition to summary judgment disposition, and "motion" for summary judgment was never reduced to writing and was never fully articulated either by defendant's counsel or by district judge. [Stella v. Town of Tewksbury, Mass., C.A.1 \(Mass.\) 1993, 4 F.3d 53. Summary Judgment](#) 🏠 280

District court erred in sua sponte granting summary judgment for insurer on issue of insured's tort claims, where insurer's motion for summary judgment related only to issue of breach of contract claims and insured did not receive the required ten days notice so that it could present its case to district court. [Judwin Properties, Inc. v. U.S. Fire Ins. Co., C.A.5 \(Tex.\) 1992, 973 F.2d 432, rehearing denied. Summary Judgment](#) 🏠 280

District court's sua sponte entry of summary judgment against state defendants in action challenging state's failure to license traditional midwives and its construction of Illinois Medical Practice Act was improper, as they were not afforded opportunity to present court with affidavits or other materials; defendants first knew that factual as well as legal issues would be decided when judgment was entered against them. [Peckmann v. Thompson, C.A.7 \(Ill.\) 1992, 966 F.2d 295. Summary Judgment](#) 🏠 280

District court must afford party against whom sua sponte summary judgment is to be entered ten days notice and adequate opportunity to respond. [Yashon v. Gregory, C.A.6 \(Ohio\) 1984, 737 F.2d 547. Summary Judgment](#) 🏠 280

A district court must comply with ten days' notice requirement set forth in this rule before granting summary judgment sua sponte. [Hoopes v. Equifax, Inc., C.A.6 \(Ohio\) 1979, 611 F.2d 134. Summary Judgment](#) 🏠 275

District Court provided sufficient notice that it was considering summary judgment, as required to sua sponte grant summary judgment in favor of physician advisor company in relator's qui tam action under the False Claims Act (FCA) alleging that company engaged in scheme to defraud Medicare and Medicaid, where the Court notified parties that it would consider judgment based on two recent Supreme Court cases and permitted supplemental briefing on additional issues. [Polansky v. Executive Health Resources, Inc., E.D.Pa.2019, 422 F.Supp.3d 916, affirmed in part, vacated in part 17 F.4th 376, certiorari granted 142 S.Ct. 2834, 213 L.Ed.2d 1063, affirmed 143 S.Ct. 1720, 599 U.S. 419, 216 L.Ed.2d 370. Summary Judgment](#) 🏠 280

Sua sponte grant of summary judgment in favor of injured servicemember was warranted, in servicemember's cause of action against the United States for traumatic injury benefits under the Traumatic Servicemembers' Group Life Insurance Program, where the United States was on notice that court might grant summary judgment for servicemember and United States had reasonable time to respond because it acknowledged servicemember's request for sua sponte relief in its reply brief, and court granted United States leave to file additional pages in its reply. [Koffarnus v. United States, W.D.Ky.2016, 175 F.Supp.3d 769. Summary Judgment](#) 🏠 280

The summary judgment granted to District of Columbia on claim for negligent hiring, training, and supervision of two police officers, which judgment was based on failure of estate of suspect who was fatally shot by police to offer expert testimony on standard of care, was not a sua sponte judgment independent of District's motion for summary judgment, as would entitle suspect's estate, under civil procedure rules, to notice and reasonable time to respond before judgment; while district court considered an element of negligent supervision claim not raised by parties, it did not decide the case on grounds independent of that claim generally, and both parties had briefed, and therefore were on notice of, negligent supervision claim as basis for judgment. [Flythe v. District of Columbia, D.D.C.2014, 19 F.Supp.3d 311, subsequent determination 4 F.Supp.3d 216, affirmed in part, reversed in part and remanded 791 F.3d 13, 416 U.S.App.D.C. 190, rehearing en banc denied, on remand 2016 WL 4506965. Summary Judgment](#) 🏠 280

Although district courts generally consider entry of summary judgment upon the motion of a party to the proceeding, district courts are widely acknowledged to possess the power to enter summary judgment sua sponte, so long as the losing party was on notice that she had to come forward with all of her evidence, and notice was sufficient to provide the losing party with an adequate opportunity to demonstrate a genuine issue of material fact. [Jackson v. Iris.com, E.D.Va.2007, 524 F.Supp.2d 742. Summary Judgment](#) 🏠 280

District courts possess the power to enter summary judgment sua sponte, so long as the losing party was on notice that she had to come forward with all of her evidence. [Lanard Toys Ltd. v. Novelty Inc., C.D.Cal.2007, 511 F.Supp.2d 1020. Summary Judgment 280](#)

District court may enter summary judgment sua sponte if discovery is sufficiently advanced that parties have enjoyed a reasonable opportunity to glean the material facts, and if court first gives targeted party notice and chance to present evidence on essential elements of claim or defense. [Rivera-Lugaro v. Rullan, D.Puerto Rico 2007, 500 F.Supp.2d 28. Summary Judgment 280](#)

Court could grant summary judgment on behalf of hydraulic hose manufacturer without motion by manufacturer for summary judgment, as to customer's claims that manufacturer and retailer breached express warranties, breached implied warranties of fitness, and violated Delaware's Deceptive Trade Practices Act (DTPA), where retailer moved for summary judgment as to those claims, retailer demonstrated that summary judgment was appropriate, retailer's arguments applied with equal force to customer's claims against manufacturer, and customer had sufficient notice and adequate opportunity to respond to those arguments. [Don's Hydraulics, Inc. v. Colony Ins. Co., D.Del.2006, 417 F.Supp.2d 601. Sales 2809; Summary Judgment 233; Summary Judgment 277\(1\)](#)

Provided that "losing party" is put on notice she had to come forward with all of her evidence, court may enter summary judgment sua sponte. [Wilkicki v. Brady, D.R.I.1995, 882 F.Supp. 1227. Summary Judgment 280](#)

Court need not give notice of its intention to enter, sua sponte, summary judgment against party which had sought summary judgment, as threat of procedural prejudice in raising and granting motion is greatly diminished if sua sponte determination is based on issues identical to those raised by moving party. [Wiradihardja v. Bermuda Star Line, Inc., S.D.N.Y.1992, 802 F.Supp. 989. Summary Judgment 280](#)

---- Receipt, notice, practice and procedure

Clerk's mailing of notice, which concerned when summary judgment motion would be deemed unopposed, was deemed to be notice to opposing party, irrespective of whether notice was actually received or actually noticed by opposing party; therefore, fact that opposing party may not have received notice did not preclude summary judgment, in wrongful discharge action. [Dunlap v. Transamerica Occidental Life Ins. Co., C.A.11 \(Ga.\) 1988, 858 F.2d 629. Summary Judgment 276](#)

Undisputed summary judgment evidence submitted by loan servicer was sufficient to support a finding that loan servicer sent mortgagors written notice of the right to cure a default, as required under Massachusetts law; loan servicer presented an affidavit of its assistant vice president attesting that the notice was sent, which included a copy of the notice, and while mortgagors presented an affidavit of a United States Postal Service (USPS) employee attesting that she was unable to find any record of a certified letter having ever been sent to mortgagors, loan servicer countered with uncontroverted summary judgment evidence that mortgagors' failure to locate a tracking number was due to the USPS record-retention policies. [Hawkes v. BSI Financial, Inc., D.Mass.2020, 444 F.Supp.3d 260. Summary Judgment 205](#)

---- Failure to give notice, practice and procedure

District Court's grant of summary judgment in favor of state and state officials, without giving shooting victim notice and an opportunity to be heard on arguments in opposition to summary judgment, was improper, in shooting victim's § 1983 due process claim, arising from shooting by third party; although summary judgment in favor of city and city police officers was warranted, the state defendants did not move for summary judgment, and the due process claims against the state defendants rested on distinct factual allegations as to whether they exposed victim to harm by failing to take effective steps in response to third party's repeated violations of protective order against him. [Montgomery v. City of Ames, C.A.8 \(Iowa\) 2014, 749 F.3d 689, certiorari denied 135 S.Ct. 205, 574 U.S. 885, 190 L.Ed.2d 158, on remand 2015 WL 11492569. Summary Judgment 271; Summary Judgment 276](#)

District court failed to afford procedural protections to borrower's joint venturer, as non-moving party, before granting summary judgment against it on lender's claims for breach of promissory note, and therefore court could not grant summary judgment against joint

venturer; court ignored fact that lender did not move for summary judgment against joint venturer, and did not give joint venturer notice that it was considering entering summary judgment against it. [Priestley v. Headminder, Inc., C.A.2 \(N.Y.\) 2011, 647 F.3d 497.](#)

[Summary Judgment](#) 🔑 271

Reversal of district court's dismissal of motion for summary judgment on ground that it was barred from deciding motion by Court of Appeals' mandate in remand order was warranted, where district court gave no notice to parties that it thought motion was barred by mandate doctrine, movants were given no opportunity to brief the issue, and if district court had notified parties about its concerns, they could have sought clarification of mandate from the Court of Appeals. [de Jesus-Mangual v. Rodriguez, C.A.1 \(Puerto Rico\) 2004, 383 F.3d 1.](#)

[Federal Courts](#) 🔑 3773

Federal district court does not have sweeping authority to enter summary judgment at any time, without notice, against any party. [Employers Ins. of Wausau v. Petroleum Specialties, Inc., C.A.6 \(Mich.\) 1995, 69 F.3d 98.](#) [Summary Judgment](#) 🔑 351

District court's failure to give claimant in forfeiture proceeding ten-day advance notice of Government's motion for summary judgment required reversal of subsequent summary judgment entered in favor of Government. [U.S. v. One Colt Python .357 Cal. Revolver, S/N T03461 W/Holster, C.A.11 \(Fla.\) 1988, 845 F.2d 287.](#) [Summary Judgment](#) 🔑 275

District court's resolution of defendants' motion for summary judgment, without explicit notice to plaintiff, nearly six months after motion was filed did not prejudice plaintiff's right to respond contrary to Federal Rules of Civil Procedure, where plaintiff did not claim that she had failed to receive notice of summary judgment motion. [Davis v. City of Charleston, Mo., C.A.8 \(Mo.\) 1987, 827 F.2d 317, on remand 715 F.Supp. 263.](#) [Summary Judgment](#) 🔑 276; [Summary Judgment](#) 🔑 282

As general rule, noncompliance with time and notice provisions of this rule deprives court of authority to grant summary judgment, but under some circumstances requirements of this rule may be waived. [Prospero Associates v. Burroughs Corp., C.A.10 \(Colo.\) 1983, 714 F.2d 1022.](#) [Summary Judgment](#) 🔑 351

Failure to give habeas petitioner ten days' notice prevents entry of summary judgment against petitioner on grounds of repetition or abuse. [Jones v. Estelle, C.A.5 \(Tex.\) 1982, 692 F.2d 380, rehearing denied 698 F.2d 1216.](#) [Habeas Corpus](#) 🔑 801; [Summary Judgment](#) 🔑 275

Where trial court had not given plaintiff notice that it would consider affidavits and render a summary judgment, it denied plaintiff the right to present controverting material and the right to amend the pleadings and thus violated both the spirit and mandates of the rules. [Franklin v. Oklahoma City Abstract & Title Co., C.A.10 \(Okla.\) 1978, 584 F.2d 964.](#) [Summary Judgment](#) 🔑 351

Grant of summary judgment without affording defendant opportunity to show genuine issue as to any material fact and without ten days' notice before hearing on motion was erroneous. [Utility Control Corp. v. Prince William Const. Co., Inc., C.A.4 \(Va.\) 1977, 558 F.2d 716.](#) [Summary Judgment](#) 🔑 342

Where hearing on preliminary injunction became a hearing on the merits without notice as required by this rule and rule 65 of these rules and case had not been wholly lacking in procedural basis so as to justify dismissal as being frivolous, summary disposition on such motion was not warranted. [Dry Creek Lodge, Inc. v. U. S., C.A.10 \(Wyo.\) 1975, 515 F.2d 926.](#) [Summary Judgment](#) 🔑 57

Noncompliance with time provision of this rule, providing that a motion for summary judgment shall be served at least ten days before hearing date and that adverse party may serve opposing affidavits before such date, deprives court of authority to grant summary judgment. [Adams v. Campbell County School Dist., C.A.10 \(Wyo.\) 1973, 483 F.2d 1351.](#) [Summary Judgment](#) 🔑 275

Trial court had no jurisdiction to grant summary judgment under provisions of this rule providing that motion for summary judgment shall be served at least ten days before time fixed for hearing, where motion for summary judgment was filed on Dec. 29, 1971 and on following day, without notice being given or holding of a hearing trial judge sustained the

motion, notwithstanding that subsequent to granting of motion the court held a hearing on motion for new trial. [Mustang Fuel Corp. v. Youngstown Sheet & Tube Co., C.A.10 \(Okla.\) 1973, 480 F.2d 607. Summary Judgment 📌 275](#)

Motion for summary judgment should have been denied where nothing in the record indicated that defendant opposing the motion had notice that hearing was to consider the motion for summary judgment. [Gordon v. Miami Nat. Bank, C.A.D.C.1968, 406 F.2d 660, 132 U.S.App.D.C. 124. Summary Judgment 📌 342](#)

Environmental group consisting of Forest Service employees, which brought action against the Forest Service challenging decision to grant special use permit to the Navy allowing Navy to conduct electronic warfare training in national forest, failed to put Forest Service on notice via its complaint of claim that Forest Service lacked congressional authority to grant permits for purpose of military training, and thus group should have moved to amend its complaint before moving for summary judgment on that claim; group raised new argument at summary judgment challenging agency action, given that complaint's mere references to various statutes and to group's objection to Service's draft decision, which discussed congressional authorization, were insufficient to put Service on notice of claim. [Forest Service Employees for Environmental Ethics v. United States Forest Service, W.D.Wash.2018, 341 F.Supp.3d 1217, affirmed 796 Fed.Appx. 390, 2020 WL 91076. Summary Judgment 📌 277\(2\)](#)

Defendant could not be held in default for failing to respond, following removal, to plaintiff's motion for summary judgment in lieu of complaint filed in state court, where no notice of motion had been served making motion returnable before district court. [Kansallis-Osake-Pankki v. Kouri, S.D.N.Y.1993, 150 F.R.D. 69. Federal Civil Procedure 📌 2444.1](#)

---- Habeas corpus, notice, practice and procedure

Ten-day notice period provided for in federal summary judgment rule did not apply when trial court sua sponte dismissed pro se habeas corpus petition without evidentiary hearing, pursuant to rule providing for summary disposition of habeas petition. [McBride v. Sharpe, C.A.11 \(Ga.\) 1994, 25 F.3d 962, certiorari denied 115 S.Ct. 489, 513 U.S. 990, 130 L.Ed.2d 401. Habeas Corpus 📌 801](#)

---- Pro se litigants, notice, practice and procedure

District Court's instruction that the government supplement its motion for summary judgment, in a prisoner's due process challenge to an administrative forfeiture proceeding, with information about how certified mail, once received at the jail, was delivered to prisoners and that prisoner could respond if he desired to do so, did not put prisoner on notice that he needed to come forward with evidence regarding the jail's internal mail-distribution procedures, in order to avoid summary judgment, because it addressed his role in permissive terms, affording him the opportunity to address the issue, but not directing him to do so. [Nunley v. Department of Justice, C.A.8 \(Ark.\) 2005, 425 F.3d 1132, rehearing and rehearing en banc denied, on remand 483 F.Supp.2d 751. Civil Rights 📌 1429; Summary Judgment 📌 116](#)

Since it is not obvious to a layman that when his opponent files a motion for summary judgment supported by affidavits, she must file her own affidavits contradicting his opponent's if she wants to preserve factual issues for trial, either the district court or the moving party is to supply the pro se litigant with notice of the requirements of the summary judgment rule. [Irby v. New York City Transit Authority, C.A.2 \(N.Y.\) 2001, 262 F.3d 412. Summary Judgment 📌 291](#)

Requirement that district court advise pro se prisoner litigants of requirements of summary judgment rule may be met by the summary judgment movant providing the prisoner with notice; overruling [Arreola v. Mangaong, 65 F.3d 801. Rand v. Rowland, C.A.9 \(Cal.\) 1998, 154 F.3d 952, certiorari denied 119 S.Ct. 2392, 527 U.S. 1035, 144 L.Ed.2d 793. Summary Judgment 📌 291](#)

District judge improperly granted summary judgment for prison employees sued under Eighth Amendment and ADA for alleged failure to grant inmate's request for guardrails on bed and for pain medication, though judge gave parties 14 days after defendants submitted affidavit and deposition by medical practitioners to submit further materials, where judge did not inform inmate of the consequences of failing to respond to that evidence. [Bryant v.](#)

[Madigan, C.A.7 \(Ill.\) 1996, 84 F.3d 246](#), rehearing denied [91 F.3d 994](#). [Civil Rights](#) 📌 1429; [Summary Judgment](#) 📌 116

Failure of district court to apprise pro se litigants of consequences of failing to respond to motion for summary judgment is ordinarily grounds for reversal. [Ruotolo v. I.R.S., C.A.2 \(Conn.\) 1994, 28 F.3d 6](#). [Federal Courts](#) 📌 3705(3)

Pro se civil rights litigant was entitled to notice of consequences of failing to respond to summary judgment motion, with notice including both text of Federal Rule of Civil Procedure governing summary judgment motions and short and plain statement in ordinary English that any factual assertion in movant's affidavits would be taken as true by district court unless litigant contradicted movant with counteraffidavits or other documentary evidence. [Timms v. Frank, C.A.7 \(Ill.\) 1992, 953 F.2d 281](#), rehearing denied, certiorari denied [112 S.Ct. 2307, 504 U.S. 957, 119 L.Ed.2d 228](#). [Summary Judgment](#) 📌 282

Summary judgment in civil rights action by pro se incarcerated plaintiff, for his failure to answer state defendants' motion for summary judgment, was inappropriate where pro se plaintiff was unaware he was required to answer such a motion. [Graham v. Lewinski, C.A.2 \(N.Y.\) 1988, 848 F.2d 342](#). [Summary Judgment](#) 📌 116

Notice to inmate proceeding pro se on civil rights claim, that special report filed by prison officials might be treated as motion for summary judgment, and that counteraffidavits were necessary to rebut matters presented by prison officials, and second notice stating that prison officials' motion for summary judgment would be presented to district court for final ruling was sufficient to inform inmate of consequences of default under federal rule.

[Coleman v. Smith, C.A.11 \(Ala.\) 1987, 828 F.2d 714](#). [Summary Judgment](#) 📌 291

Notice given to inmate, who had brought pro se civil rights action against the Director of Classification of the Alabama Department of Corrections alleging that his constitutional rights were violated by the prison's classification procedures, of summary judgment motion was insufficient and required vacation of summary judgment entered against inmate; notice failed to inform inmate of the consequences of default, did not specify that inmate's evidence must be in the form of sworn affidavits, and did not satisfy the ten-day notice requirement. [Brown v. Shinbaum, C.A.11 \(Ala.\) 1987, 828 F.2d 707](#). [Summary Judgment](#) 📌 291

Pro se, state prisoner was not given proper notice and, thus, could not have summary judgment entered against him in his civil rights action against state prison officials alleging denial of his constitutional rights, in that neither record nor pleadings suggested that prisoner had any knowledge of rule concomitant to a motion for summary judgment, of need to assemble affidavits and other documents necessary to counter prison officials' motion, or of district court's intention to take the motion under advisement, and pleadings contained no evidence that arguments advanced by prisoner in his objections to the motion were in any meaningful way responsive to the motion or useful to the district court in ruling on the motion. [Griffith v. Wainwright, C.A.11 \(Fla.\) 1985, 772 F.2d 822](#). [Summary Judgment](#) 📌 291

Where district court failed to comply with ten-day notice requirement of this rule in entering summary judgment against pro se litigant who challenged the removal of legal and educational materials from his jail cell, judgment would be reversed and remanded. [Herron v. Beck, C.A.11 \(Ga.\) 1982, 693 F.2d 125](#). [Federal Courts](#) 📌 3781

A prisoner who is a plaintiff in a civil case and is not represented by counsel is entitled to receive notice of consequences of failing to respond with affidavits to motion for summary judgment, and this rule applies with equal force when affidavits are submitted in support of motion to dismiss. [Lewis v. Faulkner, C.A.7 \(Ind.\) 1982, 689 F.2d 100](#), on remand [559 F.Supp. 1316](#). [Federal Civil Procedure](#) 📌 1833; [Summary Judgment](#) 📌 116

Even though pro se plaintiff may not have been aware of this rule when he filed his first opposition to defendants' motion for summary judgment in action alleging violations of plaintiff's civil rights, defendants' reply memorandum put him on clear notice of rule and deficiencies of his initial response, and, therefore, when specific facts were not forthcoming in plaintiff's second opposition to summary judgment, and no attempt to provide them or conduct discovery was made, district court was well warranted in granting summary

judgment. [Mas Marques v. Digital Equipment Corp., C.A.1 \(Mass.\) 1980, 637 F.2d 24.](#)
[Summary Judgment](#) 🏠 111

Although failure of state prisoner to file any counteraffidavit in his civil rights action would have warranted entry of summary judgment in the ordinary civil action, entry of summary judgment was inappropriate in instant proceeding where plaintiff, who was proceeding pro se, had not been advised of his right to file counteraffidavits or other responsive materials or alerted to fact that his failure to so respond might result in entry of summary judgment against him. [Roseboro v. Garrison, C.A.4 \(N.C.\) 1975, 528 F.2d 309.](#) [Summary Judgment](#) 🏠 291

Alleged failure of requester, a pro se prisoner, to receive Department of Justice's (DOJ) motion for summary judgment in action under the Freedom of Information Act (FOIA), so that she purportedly did not have an opportunity to respond to motion, was not grounds to grant requester's motion for reconsideration of district court's interlocutory order granting partial summary judgment for DOJ; requester's actions, including that she filed motion to stay proceedings, indicated that she was aware of motion and on notice of deadline to respond, requester had an obligation to monitor the dockets and raise issues regarding notice in a timely manner, and district court independently determined whether undisputed material facts justified summary judgment. [Pinson v. U.S. Department of Justice, D.D.C.2019, 396 F.Supp.3d 66.](#) [Summary Judgment](#) 🏠 362

The fair notice rule does not exempt a pro se prisoner from complying with the local court rules and rules of civil procedure governing a motion for summary judgment, but rather requires notice of the potential repercussions of failing to do so. [Demmons v. Tritch, D.Me.2007, 484 F.Supp.2d 177.](#) [Summary Judgment](#) 🏠 291

When a motion for summary judgment is filed against a prisoner proceeding pro se, the district court is required to tell the prisoner about his right to file counter-affidavits or other responsive materials and to alert him to the fact that his failure to so respond might result in the entry of summary judgment against him. [Hayes v. Garcia, S.D.Cal.2006, 461 F.Supp.2d 1198,](#) affirmed [293 Fed.Appx. 447, 2008 WL 2959565,](#) certiorari denied [130 S.Ct. 226, 558 U.S. 891, 175 L.Ed.2d 156.](#) [Summary Judgment](#) 🏠 291


The failure to include a statement to a pro se litigant explaining the litigant's responsibilities in responding to a motion for summary judgment, with a motion for summary judgment, as required by local court rule, is grounds for the denial of the motion if it is not otherwise clear from the record that the pro se litigant understood the nature of the summary judgment motion. [Hartford Life Ins. Co. v. Einhorn ex rel. Estate of Mehring, E.D.N.Y.2006, 452 F.Supp.2d 126.](#) [Summary Judgment](#) 🏠 291


Decedent's estate was not entitled to grant of summary judgment directing that life insurance proceeds be paid to estate, in interpleader action brought by life insurer to determine competing claims of estate and decedent's pro se heirs, where estate failed to comply with local court rule, requiring that pro se litigants receive a notice advising them of their responsibilities in responding to a summary judgment motion at the time they receive the motion, and it was unclear whether pro se heirs were aware of their obligations in responding to the motion. [Hartford Life Ins. Co. v. Einhorn ex rel. Estate of Mehring, E.D.N.Y.2006, 452 F.Supp.2d 126.](#) [Summary Judgment](#) 🏠 291


District court would accept the truth of defendants' factual allegations, and determine whether defendants were entitled to summary judgment in action brought by pro se plaintiff, where plaintiff failed to respond to the motion, even though scheduling order and notice of motion provided plaintiff with adequate notice of his obligation to respond to the summary judgment motion, and the consequences of not doing so. [Goodson v. Evans, W.D.N.Y.2006, 438 F.Supp.2d 199.](#) [Summary Judgment](#) 🏠 282; [Summary Judgment](#) 🏠 291



Landowner who sued town and officials, alleging that town's zoning decisions violated his civil rights, was not aggrieved by purported lack of notice due to pro se litigants under local rule governing filing requirements for summary judgment motions; district court's de novo decision with respect to defendants' motion, as discussed in magistrate judge's report and recommendation, would not have relied on failure to file formal affidavits of physicians or any other identified witnesses. [Rosendale v. Lejeune, S.D.N.Y.2006, 420 F.Supp.2d 315,](#)

affirmed in part, vacated in part [233 Fed.Appx. 51, 2007 WL 1454358. Summary Judgment](#)  291


Under local rule, school director, who moved for summary judgment in pro se parent's action against him alleging violations of [§ 1983](#), arising from incident in which parent was arrested following altercation with director, was required to include in his motion papers a separate notice to parent advising her of potential consequences of a summary judgment motion, given her pro se status, before motion could be determined on merits. [Arum v. Miller, E.D.N.Y.2003, 304 F.Supp.2d 344. Summary Judgment](#)  291


District court may grant motion for summary judgment against pro se party only if pro se party has received notice that failure to respond to motion will be deemed default. [St. John v. Potter, E.D.N.Y.2004, 299 F.Supp.2d 125. Summary Judgment](#)  291


Former state inmate was given unequivocal notice of his obligation to submit evidentiary materials and opportunity to do so, as required by district court's decision to convert, to motion for summary judgment, motion seeking dismissal of former inmate's [§ 1983](#) action against state corrections officials and employees due to failure to exhaust administrative remedies pursuant to requirements of Prison Litigation Reform Act (PLRA), given that defendants moved to dismiss specifically based on exhaustion point and former inmate responded to issue in detail, former inmate twice requested, and was granted, time to submit extrinsic material relating to exhaustion issue, and both sides submitted materials beyond the complaint, thereby putting former inmate on notice to submit any other relevant materials he had. [McCoy v. Goord, S.D.N.Y.2003, 255 F.Supp.2d 233. Summary Judgment](#)  278(2)



Failure to provide principal for Chapter 11 debtors with heightened notice regarding summary judgment after she became pro se litigant in adversary proceeding, and to provide adequate notice to prior counsel, was not harmless as to all issues, and thus required reversal of summary judgment granted to opposing parties. [In re Weeks Landing, LLC, M.D.Fla.2010, 439 B.R. 897. Bankruptcy](#)  2164.1; [Bankruptcy](#)  3788


---- Waiver, notice, practice and procedure

Even if district court erred by granting summary judgment in suit to collect on \$8.5 million promissory note, without prior notice or opportunity to respond, in favor of note holder and against two individuals involved in transactions with debtor company, individuals waived this argument by failing to pursue it before district court; during hearing in which district court sought to ascertain value of various interests for note holder's judgment, individuals lodged no objection to their lack of notice, instead filing motion for new trial in which they objected only to court's conclusion that they were individually liable in spite of reinstatement of corporate charter and to holder's ability to pierce corporate veil. [Spring Street Partners-IV, L.P. v. Lam, C.A.5 \(Tex.\) 2013, 730 F.3d 427. Federal Courts](#)  3418(2)

Prisoner who brought civil rights action against various prison officials and parole board members waived her objection on appeal to District Court's lack of notice prior to sua sponte grant of summary judgment in favor of defendants, where prisoner failed to raise such objection when summary judgment was entered. [Figg v. Russell, C.A.8 \(S.D.\) 2006, 433 F.3d 593. Federal Courts](#)  3418(2)

Noncompliance with time provisions of rule requiring motion for summary judgment to be served at least ten days before hearing date deprives court of authority to grant motion for summary judgment unless opposing party has waived requirement. [Osbakken v. Venable, C.A.10 \(Wyo.\) 1991, 931 F.2d 36. Summary Judgment](#)  275

Opposing party was entitled to ten days to prepare response to motion for summary judgment, and thus, where opposing party did not waive such requirement and set forth claim of prejudice in his memorandum in opposition, trial court erred in granting motion for summary judgment which was filed and served only seven days prior to hearing thereon. [Beck v. Borden, Inc., C.A.6 \(Ohio\) 1984, 724 F.2d 44. Summary Judgment](#)  284; [Summary Judgment](#)  352

Noncompliance with time provisions of this rule deprives court of authority to grant summary judgment unless opposing party has waived requirement or there has been no prejudice to opposing party as result of court's failure to comply with such provisions. [Kistner v. Califano, C.A.6 \(Ohio\) 1978, 579 F.2d 1004. Summary Judgment](#)  275

Failure to comply with this rule requiring service of motion for summary judgment at least ten days prior to time fixed for hearing deprives the district court of authority to enter a summary judgment order, but the technical requirements of this rule may be waived under proper circumstances. [Spence v. Latting, C.A.10 \(Okla.\) 1975, 512 F.2d 93](#), certiorari denied [96 S.Ct. 198, 423 U.S. 896, 46 L.Ed.2d 129](#). [Summary Judgment](#) 🗝️ 275

Intervenor, who had at least 23-day notice of pendency of government's motion for summary judgment in its suit to collect estate taxes, had waived right to 10-day notice required by this rule when she did not object to government's oral motion to amend to make summary judgment motion applicable to her. [U.S. v. Miller, C.A.7 \(Ind.\) 1963, 318 F.2d 637](#). [Summary Judgment](#) 🗝️ 275

State corrections officer waived his notice-of-claim defense in transgender inmate's action for assault and battery, negligence, and negligence per se arising from officer's alleged sexual assault of inmate, where officer did not affirmatively assert that any of inmate's claims were barred by Arizona's notice-of-claim statute in his answer to third amended complaint, defendant did not raise notice-of-claim defense in his prior motions to dismiss, and officer first raised notice-of-claim defense when he filed his motion for summary judgment. [Goff v. Arizona, D.Ariz.2020, 526 F.Supp.3d 551](#). [Federal Civil Procedure](#) 🗝️ 751; [Summary Judgment](#) 🗝️ 277(2)

---- Miscellaneous notice sufficient, practice and procedure

Renter had sufficient notice that District Court would resolve website operator's motion for summary judgment on the merits, in renter's action alleging that operator, who provided forum for users to list properties for rent, violated Massachusetts and Colorado consumer protection laws and aiding and abetting fraud, even though operator sought summary judgment on immunity grounds under Contract Disputes Act (CDA); operator's request to resolve entire case based on CDA immunity reasonably put renter on notice of need to show that he had viable claims that did not rely on mere maintenance of website or on actions of third parties, but rather relied on operator's own actions and representations, and nothing about manner in which district court decided summary judgment motion resulted in harm to renter. [Hiam v. HomeAway.com, Inc., C.A.1 \(Mass.\) 2018, 887 F.3d 542](#). [Summary Judgment](#) 🗝️ 285

In buyer's breach of contract and fraud action against seller, district court, following grant of summary judgment for seller on buyer's claims, provided sufficient notice of its intent to address buyer's liability on seller's breach of contract counterclaim, and thus court's sua sponte grant of summary judgment for seller on counterclaim comported with notice provision of summary judgment rule; court's order following first summary judgment requested briefs on whether liability on counterclaim was determined by summary judgment already entered, and gave parties 30 days to submit briefs. [Cox Nuclear Pharmacy, Inc. v. CTI, Inc., C.A.11 \(Ala.\) 2007, 478 F.3d 1303](#). [Summary Judgment](#) 🗝️ 280

Plaintiff in products liability action received proper notice of basis of motion for summary judgment and was allowed opportunity to present evidence on each element of its claim, and grant of summary judgment was not barred due to lack of proper notice, where plaintiff had opportunity to submit and did submit evidence in connection with motion to alter or amend initial grant of summary judgment. [Triton Energy Corp. v. Square D Co., C.A.9 \(Nev.\) 1995, 68 F.3d 1216](#). [Summary Judgment](#) 🗝️ 276

Successor to lessor could submit reply memorandum with the exhibits after having submitted its summary judgment motion, where lessee received notice that court would be considering motion on specific date and lessee had opportunity to respond with affidavits. [Travelers Ins. Co. v. Liljeberg Enterprises, Inc., C.A.5 \(La.\) 1993, 7 F.3d 1203](#). [Summary Judgment](#) 🗝️ 287

Notice requirements for summary judgment hearing were met by service of motion more than two months before motion was argued, despite defendant's contention that he was only informed of scheduling conference at which motion was argued on day before conference. [Rodriguez v. Pacificare of Texas, Inc., C.A.5 \(Tex.\) 1993, 980 F.2d 1014](#), certiorari denied [113 S.Ct. 2456, 508 U.S. 956, 124 L.Ed.2d 671](#). [Summary Judgment](#) 🗝️ 342

Plaintiffs were not denied requisite notice and opportunity to be heard before summary judgment was rendered against them where cross motions for summary judgment were

made by both parties four years before motion was granted, district court, in interval, had tried related case and heard similar motions presented by some of same attorneys for both parties, and no complaint was made that plaintiff's counsel did not receive some prior notice that district court was reconsidering its earlier ruling in favor of plaintiffs during pretrial conference attended by counsel for both parties. [Brumley Estate v. Iowa Beef Processors, Inc., C.A.5 \(Tex.\) 1983, 704 F.2d 1351](#), rehearing denied [715 F.2d 996](#), certiorari denied [104 S.Ct. 1288, 465 U.S. 1028, 79 L.Ed.2d 690](#). [Summary Judgment](#) 📄 357

Economic Development Administration, which had moved for summary judgment in its favor almost a month before school district's motion was filed, was subject to summary judgment and could not complain of lack of ten days' notice before school district's motion was granted in township's action alleging that regulations and guidelines of Economic Development Administration for public works funding were arbitrary and capricious and, insofar as county's interests were identical to the Economic Development Administration's and both were cooperating in defending lawsuit, it was not unfair to treat county similarly. [Benton Tp. v. Berrien County, C.A.6 \(Mich.\) 1978, 570 F.2d 114](#). [Summary Judgment](#) 📄 279

Terminated employee's Equal Employment Opportunity Commission (EEOC) charge and amended complaint provided sufficient notice of the protected activity that she relied on in support of her claims of retaliation under the Equal Pay Act, the New York Equal Pay Act, and the New York State Human Rights Law (NYSHRL), and thus terminated employee's alleged failure to provide sufficient notice was not a basis to grant summary judgment to defendants; defendants plainly were aware of additional protected activities taken by terminated employee. [Van Brunt-Piehl v. Absolute Software, Inc., W.D.N.Y.2020, 504 F.Supp.3d 175](#). [Summary Judgment](#) 📄 285

Screenshot of an internet search, that appeared to reflect a search of a United States Postal Service tracking number and a result of "package returned to sender," submitted by mortgagors in opposition to loan servicer's summary judgment motion in action to rescind foreclosure sale, was insufficient to create a genuine dispute as to whether mortgagee sent mortgagors the notice of foreclosure sale required under Massachusetts law; the fact the notice may have been returned to sender was not the critical inquiry, when the notice requirements were satisfied by the mailing, and nonreceipt of the notice was irrelevant. [Hawkes v. BSI Financial, Inc., D.Mass.2020, 444 F.Supp.3d 260](#). [Summary Judgment](#) 📄 206

Competitor was sufficiently notified that the court might grant summary judgment in favor of patentee on hypothetical negotiation date for infringement of patent claim based on competitor's motion for summary judgment and patentee's response thereto; by moving for summary judgment regarding the date of hypothetical negotiations, competitor should have been on notice that the court would consider granting summary judgment in favor of patentee based on a particular date of hypothetical negotiations since patentee's answering brief alluded to the fact that only its proffered hypothetical negotiation date could be accepted by the court as a matter of law, and patentee's motion to exclude the testimony of competitor's expert with respect to the date of hypothetical negotiation also suggested that patentee believed the date of hypothetical negotiation could be determined as a matter of law in its favor. [Boston Scientific Corp. v. Cordis Corp., D.Del.2011, 777 F.Supp.2d 783](#). [Patents](#) 📄 1937

Time to respond, practice and procedure--Generally

District Court could not grant summary judgment in favor of employer, in former employee's ADA action, solely based on former employee's failure to file a response to employer's summary judgment motion within the time period specified by the local rule governing summary judgment, without making determination required by the federal rule of civil procedure governing summary judgment, as to whether employer met its initial burden of production, or without determining whether summary judgment as sanction was warranted. [Reed v. Bennett, C.A.10 \(Kan.\) 2002, 312 F.3d 1190](#), on remand [244 F.Supp.2d 1205](#). [Summary Judgment](#) 📄 117(1)

Striking of evidence, practice and procedure

District court's order striking estate's evidence in its summary-judgment-related rulings amounted to interpretation of the evidence, and thus, de novo review of district court's grant of summary judgment required appellate review of evidence that district court struck in suit

by employee's estate against assembler of hammermill shredder alleging claims arising under the Tennessee Products Liability Act (TPLA); the district court's striking order did not rule on the admissibility of any of the evidence estate submitted, rather, district court struck the facts because it disagreed with how the estate characterized the record evidence and found that none of the proffered facts showed the existence of genuine dispute for trial, so that district court effectively considered the stricken facts. [Cash-Darling v. Recycling Equipment, Inc., C.A.6 \(Tenn.\) 2023, 62 F.4th 969. Federal Courts](#) 📌 3604(4)

---- Motion to strike, striking of affidavits, practice and procedure

Federal Rules of Civil Procedure do not explicitly allow motions to strike in context of summary judgment. [Ferraresso v. Town of Granby, D.Conn.2009, 646 F.Supp.2d 296. Federal Civil Procedure](#) 📌 1101; [Summary Judgment](#) 📌 57

---- Opportunity to respond, striking of affidavits, practice and procedure

Where affidavit submitted by defendants in support of their summary-judgment motion in no way prejudiced plaintiffs' ability to oppose the motion, the district court did not abuse its discretion in refusing to strike it or in refusing to reopen discovery to allow affiant's deposition; plaintiffs admitted all material facts for which the affidavit was cited in support, and defendants did not cite to or rely upon the specific paragraph that plaintiffs disputed. [Gutierrez v. AT&T Broadband, LLC, C.A.7 \(Ill.\) 2004, 382 F.3d 725, rehearing and rehearing en banc denied. Federal Civil Procedure](#) 📌 1264; [Summary Judgment](#) 📌 310; [Summary Judgment](#) 📌 345

---- Citation requirements, record, practice and procedure

In responding to factual challenge to standing, vehicle purchasers were not entitled to benefit of the entire record, rather, purchasers had responsibility to cite to particular parts of materials in the record pursuant to summary judgment rule in purchasers' class-action lawsuit against vehicle manufacturer and designer of vehicle's computer system asserting overpayment claims, although summary-judgment rule permitted court to consider un-cited materials; summary-judgment rule only required court to consider cited materials, and rule assigning responsibility to cite to record to parties was particularly important since case involved a voluminous record. [Flynn v. FCA US LLC, C.A.7 \(Ill.\) 2022, 39 F.4th 946. Summary Judgment](#) 📌 233; [Summary Judgment](#) 📌 286; [Summary Judgment](#) 📌 302

DISCOVERY

Discovery generally

[Rule 56](#) governing summary judgment [[Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.](#)] does not require trial courts to allow parties to conduct discovery before entering summary judgment. [U.S. Through Small Business Admin. v. Light, C.A.8 \(S.D.\) 1985, 766 F.2d 394. Summary Judgment](#) 📌 344

Failure to make discovery

Plaintiffs were not adequately on notice that trademark counsel employed by defendant's parent company was a potential witness, and so the district court erred in failing to strike his affidavit, which had been proffered by defendants in support of their summary-judgment motion, and the Court of Appeals would ignore the affidavit in its review; neither a service mark application uncovered by plaintiffs nor the testimony of defendants' designated deponent were enough to put plaintiffs on notice that counsel possessed information pertinent to their claims such that they would be expected to request his deposition or anticipate that his affidavit might be offered in support of defendants' summary-judgment motion, as no witness indicated counsel possessed information pertinent to this matter or was even employed by parent company during the relevant time. [Gutierrez v. AT&T Broadband, LLC, C.A.7 \(Ill.\) 2004, 382 F.3d 725, rehearing and rehearing en banc denied. Federal Civil Procedure](#) 📌 1278

---- Miscellaneous actions, time for discovery

Estate of deceased pretrial detainee, which brought medical-negligence action under New Hampshire law against physician and physician's assistant, who contracted with county to provide medical care at county jail, alleging that detainee died of opioid withdrawal while detained in jail, was not entitled, under rule providing that when nonmovant to motion for summary judgment showed it could not present facts essential to justify its opposition, court could defer considering motion or deny it, allow time to obtain affidavits or declarations or to take discovery, or issue any other appropriate order, to relief from defendants' motion for summary judgment, where estate substantively opposed defendants' summary-judgment

motion but simultaneously sought other relief. [Sacco v. American Institutional Medical Group, D.N.H.2022, 609 F.Supp.3d 22. Summary Judgment](#) 🏠 344

---- Arbitration, necessity of discovery

Pharmacy benefits manager was entitled to discovery limited to question of arbitrability of pharmacies' claims in mass action, alleging they were paid less than they were due under their contracts, prior to District Court ruling under summary judgment standard on any motion by pharmacy benefits manager's to compel arbitration; discovery conducted by pharmacy benefits manager was limited to pharmacies with which it did not seek to compel arbitration, and any discovery that might have occurred with respect to arbitrability after filing of original motion by pharmacy benefits manager to compel arbitration under motion-to-dismiss standard was of little use without later opportunity to move to compel arbitration under summary-judgment standard. [Robert D. Mabe, Inc. v. OptumRX, C.A.3 \(Pa.\) 2022, 43 F.4th 307, on remand 2024 WL 3498353. Alternative Dispute Resolution](#) 🏠 205

---- Immigration and naturalization, necessity of discovery, discovery

Applicants for asylum who brought suit against the government alleging that the United States Citizenship and Immigration Services (USCIS) had unreasonably delayed in processing their application did not establish that there were specific, relevant facts that discovery would reveal that were essential to opposing the government's summary-judgment motion, and applicants thus were not entitled to take such discovery; applicants' hope to unveil relevant evidence was speculative, and they did not explain how the facts they sought would preclude summary judgment. [Estrada v. Mayorkas, N.D.Cal.2024, 347 F.R.D. 36. Summary Judgment](#) 🏠 345

Delay of ruling, discovery

Insurer for company that installed and maintained alarm on generator in building was not entitled to a deferral under Federal Rule of Civil Procedure governing summary judgment in order to obtain depositions from entities involved in cleanup and investigation of diesel that had overflowed from the generator in action brought by building tenants' insurers against the company, where insurer had stated that 12,000 pages of documents under its control would demonstrate that the spill was an environmental incident excluded from policy, and insurer failed to indicate how the emergent facts, if adduced, would influence the outcome of the pending summary judgment motions. [Zurich American Ins. v. Lord Elec. Co. of Puerto Rico, D.Puerto Rico 2013, 986 F.Supp.2d 104, corrected. Summary Judgment](#) 🏠 345; [Summary Judgment](#) 🏠 352

Stay of discovery, discovery

Order staying discovery pending resolution of prison supervisor's motion for summary judgment based on qualified immunity, in § 1983 and tort action by plaintiff, former prison inmate, alleging rape by corrections officer, did not place plaintiff on reasonable notice that she was barred from using New Mexico's Inspection of Public Records Act (IPRA) to request supervisor's time records from Corrections Department, and plaintiff thus did not violate stay order by making IPRA request, though same records were subject of discovery request; stay order did not expressly or implicitly bar plaintiff from using mechanism outside Federal Rules of Civil Procedure to obtain discovery, IPRA provided independent right to obtain public records, and weight of authority did not preclude plaintiff's use of IPRA. [Encinias v. Sanders, D.N.M.2021, 570 F.Supp.3d 1078. Federal Civil Procedure](#) 🏠 1278

---- Affidavits, additional discovery

A mere reference to the federal rule of civil procedure allowing a continuance for additional discovery before summary judgment, and a mere reference to the need for additional discovery, in a memorandum of law in opposition to a motion for summary judgment, is not an adequate substitute for the affidavit required by the rule, and the failure to file an affidavit is itself sufficient grounds to reject a claim that the opportunity for discovery was inadequate. [Henry-Lee v. City of New York, S.D.N.Y.2010, 746 F.Supp.2d 546. Summary Judgment](#) 🏠 345

---- Diligence, additional discovery

Employee and former employee were entitled to additional discovery concerning employer's Family Medical Leave Act (FMLA) policies before responding to employer's motion for summary judgment on employee's and former employee's claims that employer violated FMLA, where employer filed its summary-judgment motion just shy of a month after answering complaint and there was no allegation or evidence that employee and former

employee delayed discovery or were not diligent in pursuing it given that time for discovery had only recently commenced, little to no discovery had occurred when employee and former employee requested additional discovery, and FMLA policies had potential to change outcome of summary-judgment motion. [Schobert v. CSX Transportation Inc., S.D.Ohio 2020, 504 F.Supp.3d 753. Summary Judgment 📌 344](#)

---- Notice, additional discovery

District court did not abuse its discretion in refusing to strike affidavit of defendant's collections manager which was proffered by defendants in support of their summary-judgment motion, or in refusing to allow additional discovery, where, although affiant was not listed in any of defendants' discovery responses or offered as a designated deponent in response to plaintiffs' deposition notice, plaintiffs were on notice prior to close of discovery that affiant had information pertinent to the litigation and was a potential witness, and so plaintiffs had fair opportunity to seek discovery from her prior to deadline for filing summary-judgment motions. [Gutierrez v. AT&T Broadband, LLC, C.A.7 \(Ill.\) 2004, 382 F.3d 725, rehearing and rehearing en banc denied. Federal Civil Procedure 📌 1278](#)

---- Strategy and tactics, additional discovery

District court was not required to belatedly punish defendants by striking affidavit proffered in support of their summary-judgment motion or reopening discovery where, although defendants provided a largely unresponsive witness as their designated deposition representative, plaintiffs made a tactical decision not to insist that defendants produce better witnesses after he proved inadequate but, instead, plaintiffs raised their dissatisfaction with the witness only after the close of discovery, in the midst of summary-judgment briefing, and with prior knowledge that better witnesses, such as the affiant, existed. [Gutierrez v. AT&T Broadband, LLC, C.A.7 \(Ill.\) 2004, 382 F.3d 725, rehearing and rehearing en banc denied. Federal Civil Procedure 📌 1451](#)

---- Delay of ruling, additional discovery

Mortgagor was not entitled to delay District Court's ruling on motion for summary judgment filed by mortgagee's assignee, Federal National Mortgage Association (Fannie Mae), on ground that record was not sufficiently developed to permit resolution of the motion, in action alleging deceit and negligent misrepresentation in connection with foreclosure on his home; mortgagor affirmatively agreed, during status conference, that additional discovery was not needed, and mortgagor failed to invoke federal rule of civil procedure allowing a party opposing summary judgment to delay a ruling on the motion to conduct additional discovery. [Faiella v. Federal National Mortgage Association, C.A.1 \(N.H.\) 2019, 928 F.3d 141. Summary Judgment 📌 344](#)

Discovery after hearing, discovery

Accused infringer of patents related to wireless charging would not be permitted to take discovery, after hearing on parties' cross-motions for summary judgment on accused infringer's license defense, to establish the admissibility of assertions in financial statements of certain parent company, which had entered into license agreements with accused infringer, about parent's control of subsidiary, which had transferred to plaintiff the patents in suit, where those assertions were the basis of accused infringer's defense that it had a license to patents in suit by virtue of its agreements with parent, accused infringer did not take discovery about statements before summary-judgment briefing, and accused infringer did not move before hearing for discovery to oppose summary judgment. [Scramoge Technology Limited v. Apple, Inc., N.D.Cal.2023, 669 F.Supp.3d 826. Summary Judgment 📌 345](#)

INFERENCES

Adverse, inferences

A party requesting an adverse inference against party who fails to produce requested evidence on a motion for summary judgment must show (1) that the party having control over the evidence had an obligation to timely produce it, (2) that the party that failed to timely produce the evidence had a culpable state of mind, and (3) that the missing evidence is relevant to the party's claim or defense such that a reasonable trier of fact would find that it would support that claim or defense; to satisfy that test, the party seeking the adverse inference must show both that its opponent defied a court order or an obligation under the Federal Rules of Civil Procedure and that the evidence that it has requested in fact exists.

[Odyssey Marine Exploration, Inc. v. Shipwrecked and Abandoned SS Mantola](#), S.D.N.Y.2019, 425 F.Supp.3d 287. [Federal Civil Procedure](#) 1636.1

BURDEN OF PROOF

--- Discrimination, civil rights actions, burden of proof

At the summary-judgment stage, a plaintiff must adduce either direct or circumstantial evidence to prevail on a Title VII race-discrimination claim. [Upshaw v. Ford Motor Co.](#), C.A.6 (Ohio) 2009, 576 F.3d 576, rehearing and rehearing en banc denied, on remand 2010 WL 11632626. [Summary Judgment](#) 117(1)

Immunity, burden of proof

The general proposition that a court accept a plaintiff's version of the facts in the qualified-immunity summary-judgment setting is not true to the extent that there is clear contrary video evidence of the incident at issue; indeed, when opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment. [Barre v. Ramsey](#), N.D.Okla.2022, 601 F.Supp.3d 1038, appeal dismissed 2022 WL 17368375. [Summary Judgment](#) 156

EVIDENCE

--- Affidavits and depositions, contradiction of own evidence

District court would not rely on patient's summary-judgment declaration that she received express warranties from drug manufacturer about bisphosphonate drug's ability to prevent bone fractures, in ruling on manufacturer's motion for summary judgment on claim for breach of express warranty in patient's products-liability action alleging drug caused her to develop osteonecrosis of the jaw (ONJ); declaration contradicted patient's deposition testimony that she never received express warranty from manufacturer. [In re Fosamax Products Liability Litigation](#), S.D.N.Y.2013, 924 F.Supp.2d 477, reconsideration denied 2013 WL 12330501. [Summary Judgment](#) 244

--- Conclusory allegations, expert testimony, evidence

Portions of expert's report concluding that motorist violated a handful of Montana laws, including the statute requiring drivers to drive on the right side of the roadway and statute requiring a vehicle to be operated as nearly as practicable entirely within a single lane, were inadmissible at summary-judgment stage, in action brought by pedestrian's estate, alleging negligence, wrongful death, and a survival action, since they contained impermissible legal conclusions. [Estate of DeCrane through DeCrane v. Tenke](#), D.Mont.2022, 646 F.Supp.3d 1296. [Evidence](#) 2377; [Summary Judgment](#) 322

ADMISSIBILITY OF EVIDENCE

Expert reports, admissibility of evidence

Portions of expert's report concluding that one or more of the fatalities resulting from automobile accident could have been avoided if motorist, who straddled his truck over the centerline to avoid wildlife, had been driving in the correct lane were admissible at summary-judgment stage, in action brought by pedestrian's estate, alleging negligence, wrongful death, and a survival action, since they contained permissible statements on an ultimate issue of fact. [Estate of DeCrane through DeCrane v. Tenke](#), D.Mont.2022, 646 F.Supp.3d 1296. [Evidence](#) 2377; [Summary Judgment](#) 318

--- Miscellaneous affidavits, admissibility of evidence

Affidavit submitted by employer's supervisor, in opposition to employees' motion for summary judgment in lawsuit alleging violations of the overtime and minimum wage provisions of the FLSA and Maryland Wage and Hour law, did not conform to Federal Rule of Civil Procedure regarding affidavits or declarations; affidavit was made to best of supervisor's knowledge, information and belief which was not a sufficient affirmation, and affidavit was undated and improperly signed. [Brown v. White's Ferry, Inc.](#), D.Md.2012, 280 F.R.D. 238. [Summary Judgment](#) 313(1)

Reports, admissibility of evidence

Expert reports submitted by trustee for substantively consolidated SIPA liquidation of debtor, which was investment firm that operated Ponzi scheme, were admissible at summary-judgment stage of action in which trustee sought avoidance and recovery of \$2,925,000 in allegedly fictitious profits that debtor transferred to investors in two year

period prior to commencement of SIPA liquidation; despite argument that expert reports were based on debtor's books and records, which were permeated with fraud, hearsay exception for records of a regularly conducted activity favored admission of evidence if it had any probative value at all, and residual doubts on question of trustworthiness went to weight of evidence, not its admissibility. [Securities Investor Protection Corporation v. Bernard L. Madoff Investment Securities LLC](#), S.D.N.Y.2021, 528 F.Supp.3d 219, affirmed 49 F.4th 170. [Evidence](#) 🔑 1265; [Evidence](#) 🔑 2506; [Summary Judgment](#) 🔑 321

ADMISSIONS

---- Local rules, statements, admissions

District Court did not err in treating facts from school district's motion for summary judgment that former employee deemed "admitted, but disputed" as simply admitted and in refusing to consider employee's supplemental explanations to admitted facts due to employee's failure to comply with local court rule that required a party opposing summary judgment to list by number each fact that it conceded to be material but claimed to be disputed, in employee's action against district under Rehabilitation Act, where local rule was consistent with Federal Rule of Civil Procedure governing motions for summary judgment, employee's attorney had been admonished for violating same rule in earlier summary briefings, yet willfully chose to violate rule again, and employee was given a fair opportunity to oppose summary judgment. [Frakes v. Peoria School District No. 150](#), C.A.7 (Ill.) 2017, 872 F.3d 545. [Summary Judgment](#) 🔑 286

Fed. Rules Civ. Proc. Rule 56, 28 U.S.C.A., FRCP Rule 56

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